

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

TRANSCRIPT OF RECORD.

Court of Appeals, District of Columbia

OCTOBER TERM, 1910.

No. 2211

770

MARIAN E. J. MARTIN, APPELLANT,

vs.

FLORENCE POOLE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED AUGUST 23, 1910.

COURT OF APPEALS OF THE DISTRICT OF COLUMBIA

OCTOBER TERM, 1910.

No. 2211.

MARIAN E. J. MARTIN, APPELLANT,

vs.

FLORENCE POOLE, APPELLEE.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

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In the Court of Appeals of the District of Columbia.

No. 2211.

MARION E. J. MARTIN, Appellant,
vs.
FLORENCE POOLE.

4 Supreme Court of the District of Columbia.

Equity. No. 27033.

MARION E. J. MARTIN, Complainant,
vs.

THOMAS R. MARTIN, LEE R. MARTIN, MARK F. FINLEY, WILLIAM A. Collis, F. Walter Brandenburg, John A. Wineberger, Charles G. Allen, Andrew H. Ragan, William C. Flenner, Florence Poole, and A. Coulter Wells, Trustee in Bankruptcy of Martin Brothers, Defendants.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Bill.*

Filed Apr. 25, 1907.

In the Supreme Court of the District of Columbia, Holding an Equity Court.

Equity. No. 27033.

MARION E. J. MARTIN, Complainant,
vs.

THOMAS R. MARTIN, LEE R. MARTIN, MARK F. FINLEY, JOHN A. WINEBERGER, & CHARLES G. ALLEN, Defendants.

To the Supreme Court of the District of Columbia, holding an Equity Court:

The Complainant states as follows:

1. She is a citizen of the United States and a resident of the District of Columbia, and brings this suit in her own right.

2. The defendants are citizens of the United States and residents of the District of Columbia, the defendants Thomas R. Martin, Lee R. Martin, Mark F. Finley, John A. Wineberger and Charles G. Allen being sued as trustees, as hereinafter set forth, the defendants Thomas R. Martin and Lee R. Martin also being sued as individuals and as co-partners as hereinafter set forth.

3. Heretofore, to wit: on the 16th day of May, A. D. 1868, Frederick A. Tschiffely, by deed dated May 16, 1868, and recorded June 20th, 1868, in Liber 562 at Folio 218 et seq., one of the Land Records of the District of Columbia, conveyed in fee simple to James A. Wineberger, all those lots and parcels of ground and real estate in said District described as follows, that is to say, lots A and B in Frederick A. Tschiffely's sub-division of lots numbered 20, 22 and 23, in square numbered 88, per plat recorded in the Office of the Surveyor for the District of Columbia in Liber W. F. at folio 168.

4. On, to wit: the 5th day of April, A. D. 1873, Samuel R. Phillips and John J. Johnson, by deed dated April 5, 1873, and recorded April 8th, 1873, in Liber 713 at folio 223 et seq., one of the Land Records of the District of Columbia, conveyed in fee simple to the said James A. Wineberger all that lot and parcel of ground and real estate in said District described as follows, that is to say, the north half of Lot numbered 4 in Square numbered 56; and said James A. Wineberger subsequently made a sub-division of said last described real estate as per plat recorded in the office of the Surveyor for the District of Columbia in Liber R. L. H. at folio 238.

5. Thereafter, on, to wit: the 14th day of September, A. D. 1901, the said James A. Wineberger by deed dated September 14, 1901, and recorded October 28th, 1901, in Liber 2612 at folio 107 et seq., one of the Land Records of the District of Columbia, conveyed lot numbered 13 of his, the said James A. Wineberger's said sub-division of the said north half of Lot 4 in Square 56, being a portion of the lot or parcel of ground and real estate described in paragraph four of this Bill, and acquired by him from Samuel R. Phillips and John J. Johnson, as aforesaid, unto the said Lee R. Martin and the said Thomas R. Martin, in trust to secure the sum of two thousand dollars (\$2000) unto complainant, for which amount the said James A. Wineberger passed his note dated September 14, 1901, payable to the order of complainant three years after date, with interest at the rate of six per cent. per annum, interest payable semi-annually; as will more fully appear by reference to said deed, a copy of which is herewith filed marked "Exhibit A," and is prayed to be read as part hereof. Complainant on said September 14th, 1901, loaned to said James A. Wineberger the sum of two thousand dollars (\$2000), and received from the said James A. Wineberger the said note, which she has now and has always since she received it had in her possession, the interest upon said note having been paid to complainant up to and including September 14th, 1906, but none of the principal of said note having been paid.

6. Subsequently, on, to wit: the 15th day of June, 1904, the said Lee R. Martin and the said Thomas R. Martin, by deed dated June 15, 1904, and recorded June 25th, 1904, in Liber 2826 at folio 153, one of the Land Records of the District of Columbia, released the said deed of trust to them, reciting in said deed of release that the debt secured thereby had been fully paid and the note in evidence thereof cancelled; as will more fully appear by reference to said deed of release, a copy of which is herewith filed marked 4 "Exhibit B," and is prayed to be read as part hereof.

7. Complainant charges that the said release of said deed of trust was made without her consent and without her knowledge or authority in fact or in law; (the fact of such release having been made having come to her knowledge for the first time within the last few days), and was made in violation of her rights; and she is advised, and on such advice charges and avers, that she is entitled to have said deed of trust reinstated as a lien upon the said property so as aforesaid conveyed to said Lee R. Martin and Thomas R. Martin, as though it had never been released.

8. Subsequent to the execution by the said James A. Wineberger of the deed of trust mentioned in the fifth paragraph of this Bill, and prior to the release of said deed of trust as recited in the sixth paragraph of this Bill, on, to wit: the 8th day of April, 1902, the said James A. Wineberger by deed dated April 8, 1902, and recorded April 9th, 1902, in Liber 2652 at folio 62 et seq., one of the Land Records of said District, conveyed lots A and B in F. A. Tschiffely's sub-division of lots in Square 88, heretofore mentioned in the third paragraph of this Bill, unto Mark F. Finley and F. W. Brandenburg, in trust to secure the sum of seven hundred dollars (\$700) unto said Thomas R. Martin, for which amount the said James A. Wineberger passed his note dated April 8, 1902, payable to the order of said Thomas R. Martin three years after date, with interest at the rate of six per cent. per annum, interest payable semi-annually; which said deed of trust has not been released, 5 and which said note for seven hundred dollars is now in the possession of the defendants Guy H. Johnson and Joseph D. Sullivan as receivers as hereinafter set forth. Complainant is not informed whether said note has been paid or not; or whether there was any consideration for said note or not, and demands strict proof thereof. A copy of the last mentioned deed of trust is filed herewith marked "Exhibit C," and is prayed to be read as part hereof.

9. Subsequent to the execution of the deeds of trust mentioned in the fifth and eighth paragraphs of this Bill, and prior to the execution of the release mentioned and described in the sixth paragraph of this Bill, on, to wit: the 21st day of February, 1903, the said James A. Wineberger by deed dated February 21, 1903, and recorded February 24th, 1903, in Liber 2675 at folio 436 et seq., one of the Land Records of said District, conveyed the real estate described in the third and fourth paragraphs of this bill unto F. Walter Brandenburg and William A. Collis in trust to secure the sum of five hundred dollars (\$500) to Mary S. Hogan, for which

amount the said James A. Wineberger passed his note dated February 21, 1903, payable to the order of said Mary S. Hogan two years after date with interest at the rate of six per cent. per annum, interest payable semi-annually; which said deed of trust was released by the said trustees F. Walter Brandenburg and William A. Collis by deed of release dated July 1, 1904, and recorded July 1st, 1904, in Liber 2834 at folio 115 et seq., one of the Land Records of the said District; as will more fully appear by reference to said deed of trust and said deed of release, copies of which are herewith filed marked, respectively, "Exhibit D" and "Exhibit E," and are prayed to be read as part hereof. The said note for five hundred dollars is now in the possession of the said defendants Guy H. Johnson and Joseph D. Sullivan as receivers as hereinafter set forth; and complainant is not informed whether said note has been paid or not; or whether there was any consideration for said note or not, and demands strict proof thereof.

10. Subsequent to all the deeds hereinbefore mentioned, and subsequent to the release mentioned and described in the sixth paragraph of this Bill, and prior to the release mentioned and described in the ninth paragraph of this Bill, on, to wit: the 25th day of June, 1904, the said James A. Wineberger by deed dated June 25, 1904, and recorded June 25, 1904, in Liber 2826 at folio 150 et seq., one of the Land Records of the said District, conveyed the real estate described in the third and fourth paragraphs of this Bill unto the defendants Lee R. Martin and Mark F. Finley, in trust to secure the sum of thirty-five hundred dollars (\$3500) to the said Thomas R. Martin, for which amount the said James A. Wineberger passed his note dated June 25, 1904, payable to the order of said Thomas R. Martin three years after date, with interest at the rate of six per cent. per annum, interest payable semi-annually; which said note for thirty-five hundred dollars is now in the possession of the defendants Guy H. Johnson and Joseph D. Sullivan as receivers as hereinafter set forth, and complainant is not informed whether said note has been paid or not; or whether there was any consideration for said note, or not, and demands strict proof thereof; and which said last mentioned deed of trust has not been released, a copy of which said deed of trust is herewith filed marked "Exhibit F", and is prayed to be read as part hereof.

11. The defendants Thomas R. Martin and Lee R. Martin were at the time of the execution of the deed of trust to them described in the fifth paragraph of this Bill, to wit: on the 14th day of September, 1901, and have been at all times subsequent thereto, and now are copartners in the real estate business, trading as such in the City of Washington, District aforesaid, under the firm name and style of Martin Brothers; and as such copartners were the agents of the said James A. Wineberger in securing for him loans of money upon his real estate herein described, and in preparing the deeds of trust herein mentioned, and in managing the real estate of and for him, from and after the date first mentioned in this paragraph. At the time of the execution of the deed of trust to secure the sum of thirty-five hundred dollars set out and described in the tenth paragraph of this

Bill, on, to wit: June 25th, 1904, the said James A. Wineberger was indebted to said Martin Brothers in the sum of three hundred dollars (\$300) more or less, in addition to the indebtedness evidenced by the notes for \$2000, \$700 and \$500, described, respectively, in paragraphs five, eight and nine of this Bill. Complainant believes and therefore avers, that the said James A. Wineberger executed his note for thirty-five hundred dollars, and the deed of trust to secure the payment of the same, both of which are described in the tenth paragraph of this Bill, with the intention and for the purpose of putting his indebtedness of \$2000, \$700, \$500 and \$300, hereinbefore mentioned, into one obligation; though this, if done, was done without the knowledge or consent of complainant.

12. On the 5th day of April, 1907, the defendant Lee R. Martin began a suit in equity in this court against the defendant Thomas R. Martin, praying for a dissolution of the partnership mentioned in the eleventh paragraph of this Bill, and praying for an accounting and for the appointment of receivers to take charge and possession of the assets and effects of said partnership; which said suit is entitled Lee R. Martin vs. Thomas R. Martin, Equity No. 26980 of the docket of this court; in which suit this court passed a decree on the said 5th day of April, 1907, appointing the defendants Guy H. Johnson and Joseph D. Sullivan, receivers to take charge of the assets and effects of said partnership upon their giving bond in the penalty of five thousand dollars. The said defendants Guy H. Johnson and Joseph D. Sullivan thereupon on the said 5th day of April, 1907, gave the required bond and took charge and possession and now have charge and possession of the assets and effects of said partnership, among which are the notes for \$700, \$500 and \$3500 hereinbefore described in paragraphs eight, nine and ten, respectively, of this Bill.

13. The said James A. Wineberger on, to wit: the 12th day of December, 1905, by deed dated December 12, 1905, and recorded December 12, 1905, in Liber 2980 at folio 393 et seq., one of the Land Records of said District, conveyed all the real estate hereinbefore mentioned and described unto John A. Wineberger and Charles G. Allen, defendants herein, in trust to manage, and with power to sell, convey and mortgage, said real estate for the benefit of the said James A. Wineberger, his heirs and assigns, a copy of which said deed is herewith filed marked "Exhibit G", and is prayed to be read as part hereof.

Wherefore the premises considered, and your complainant being without remedy save in your honorable court, prays as follows:

1. That process may issue against the said defendants Thomas R. Martin, Lee R. Martin, Mark F. Finley, John A. Wineberger, Charles G. Allen, Guy H. Johnson and Joseph D. Sullivan, commanding them and each of them to appear herein on a day fixed by this court, and answer the exigencies of this Bill.

2. That said defendants and each of them may be required to answer this Bill under oath as fully and particularly as if specially interrogated thereto.

3. That said deed of trust to said defendants Lee R. Martin and

Thomas R. Martin to secure two thousand dollars to your complainant, as described in the fifth paragraph of this Bill, may be decreed to be reinstated as a lien upon the real estate therein described, as fully and completely as though no release thereof had been
 10 made; and that it may be foreclosed by the decree of this court.

4. That the defendants Thomas R. Martin and Lee R. Martin may be enjoined, temporarily during the pendency of this suit, and perpetually at the final hearing, from selling, negotiating, or in any manner disposing of the said note for thirty-five hundred dollars described in the tenth paragraph of this Bill.

5. That the defendants John A. Wineberger and Charles G. Allen may be enjoined temporarily during the pendency of this suit from selling, conveying, mortgaging or in any manner encumbering or disposing of any legal or equitable estate which they may have in the real estate herein described and conveyed to them as set forth in the thirteenth paragraph of this Bill.

6. That complainant may have such other and further relief as the nature of the case may require and as the court may deem meet and proper.

MARION E. J. MARTIN.

JAMES S. EASBY-SMITH,
Solicitor for Complainant.

STATE OF MARYLAND,
Montgomery County, ss:

Marion E. J. Martin being first duly sworn deposes and says that she is the complainant named in the foregoing Bill by her subscribed; that she has read said Bill and knows the contents thereof, and that
 11 the statements therein made of her own knowledge are true, and those made on information and belief she believes to be true.

MARION E. J. MARTIN.

Subscribed and sworn to before me this 20th day of April, 1907.

[SEAL.]

F. D. LEIZEAR,
Notary Public.

The defendants to this Bill are: Thomas R. Martin, Lee R. Martin, Mark F. Finley, John A. Wineberger & Charles G. Allen.

JAMES S. EASBY-SMITH,
Solicitor for Complainant.

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EXHIBIT B.

Liber 2826, Folio 153 et seq.

Recorded June 25, 1904, 12:00 M.

MARTIN AND MARTIN, Tr's,

vs.

JAMES A. WINEBERGER.

Release.

Know all men by these presents: That we, Thomas R. Martin and Lee R. Martin, both of the City of Washington, District of Columbia, Trustees under a certain Deed of Trust from James A. Wineberger, unmarried, of the same place, for the sum of Two Thousand Dollars, dated September 14, 1901 and recorded October 28, 1901 in Liber 2612 at folio 107 of the Land Records of the District of Columbia, in consideration of one dollar current money to us in hand paid by James A. Wineberger, receipt whereof, before the delivery of these presents, is hereby acknowledged, have granted, released and conveyed, and do hereby grant, release quit-claim and convey unto James A. Wineberger, his heirs and assigns, the following described land and premises situate, lying and being in the City of Washington, District of Columbia and distinguished as Lot numbered Thirteen (13) in James A. Wineberger's Subdivision of the North one half of original lot Four (4) in Square Fifty six (56) as per plat recorded in the office of the Surveyor of the District of Columbia, recorded in Liber R. L. H. Folio 238.

To have and to hold the same, with the appurtenances, unto and to the use of the said James A. Wineberger's, his, heirs and assigns forever, fully released and discharged from the effect and operation of said Deed of Trust, the indebtedness secured thereby having been fully paid, the note representing said indebtedness having been shown us marked paid, and duly cancelled.

Witness our hands and seals this Fifteenth day of June, A. D. 1904.

THOMAS R. MARTIN, *Trustee.* [SEAL.]
LEE R. MARTIN, *Trustee.* [SEAL.]

Signed sealed and delivered in the presence of
J. THOMAS SOTHORON.

UNITED STATES OF AMERICA,
District of Columbia, To wit:

I, J. Thomas Sothoron, a Notary Public in and for the District of Columbia, do hereby certify that Thomas R. Martin and Lee R. Martin both of the City of Washington, District of Columbia, Trustees, parties to a certain Deed bearing date on the Fifteenth day of

June, 1904 and hereto annexed, personally appeared before me in said District, the said Thomas R. Martin and Lee R. Martin, being personally well known to me as the persons who executed the said Deed and acknowledged the same to be their act and deed.

Given under my hand and seal this Fifteenth day of June, 1904.

J. THOMAS SOTHORON,

[NOTARIAL SEAL.]

Notary Public, D. C.

14

OFFICE OF RECORDER OF DEEDS,
DISTRICT OF COLUMBIA.

This is to certify that the foregoing is a true and verified copy of an instrument, as recorded in Liber 2826, folio 153, et seq., one of the Land Records of the District of Columbia.

In testimony whereof I have hereunto set my hand and affixed the seal of this office this 24th day of April, A. D. 1907.

[SEAL.]

R. W. DUTTON,

Deputy Recorder of Deeds, Dist. of Col.

15

Amended Bill.

Filed May 8, 1907.

In the Supreme Court of the District of Columbia, Holding an
Equity Court.

Equity. No. 27033.

MARION E. J. MARTIN, Complainant,

vs.

THOMAS R. MARTIN, LEE R. MARTIN, MARK F. FINLEY, WILLIAM A. Collis, F. Walter Brandenburg, John A. Wineberger, Charles G. Allen, Andrew H. Ragan, William C. Flenner, and Florence Poole, Defendants.

To the Supreme Court of the District of Columbia, holding an
Equity Court:

The complainant in this, her amended Bill of Complaint, states to the Court as follows:

1. She is a citizen of the United States and a resident of the District of Columbia, and brings this suit in her own right.

2. The defendants, Thomas R. Martin, Lee R. Martin, Mark F. Finley, William A. Collis, F. Walter Brandenburg, John A. Wineberger, Charles G. Allen, Andrew H. Ragan and William C. Flenner are residents of the District of Columbia, and the defendant Florence Poole is a resident of the State of Maryland. The defendants Thomas R. Martin, Lee R. Martin Mark F. Finley, Wil-

16 liam A. Collis, F. Walter Brandenburg, John A. Wineberger, and Charles G. Allen are sued as trustees as hereinafter set forth, the defendants, Thomas R. Martin and Lee R. Martin being also sued in their own right; the defendants Andrew H. Ragan

and William C. Flenner are sued as the executors under the last will and testament of James A. Wineberger, deceased, as hereinafter set forth; and the defendant Florence Poole is sued in her own right.

3. Heretofore, to-wit, on the 16th day of May, A. D., 1868, Frederick A. Tschiffely, by deed dated May 16, 1868, and recorded June 20th, 1868, in Liber 562 at Folio 218, et seq., one of the Land Records of the District of Columbia, conveyed in fee simple to James A. Wineberger, all those lots and parcels of ground and real estate in said District described as follows, that is to say, lots A and B in Frederick A. Tschiffely's sub-division of lots numbered 20, 22 and 23, in square number 88, per plat recorded in the Office of the Surveyor of the District of Columbia in Liber W. F., at folio 168.

4. On, to-wit, the 5th day of April, A. D., 1873, Samuel R. Phillips and John J. Johnson, by deed dated April 5, 1873, and recorded April 8th, 1873, in Liber 713 at folio 223 et seq., one of the Land Records of the District of Columbia, conveyed in fee simple to the said James A. Wineberger all that lot and parcel of ground and real estate in said District described as follows, that is to say, the north half of lot number 4 in square numbered 56; and said James A. Wineberger subsequently made a sub-division of said last described real estate as per plat recorded in the Office of the Surveyor for the District of Columbia, in Liber R. L. H., at folio 238.

17 5. Thereafter, on, to-wit, the 14th day of September, A. D., 1901, the said James A. Wineberger, by deed dated September 14th, 1901, and recorded October 28th, 1901, in Liber 2612 at folio 107, et seq., one of the Land Records of the District of Columbia, conveyed lot numbered 13 of his, the said James A. Wineberger's said sub-division of the said north half of Lot 4 in Square 56, being a portion of the lot or parcel of ground and real estate described in paragraph four of this bill, owned by him, on said September 14th, 1901, and acquired by him from Samuel R. Phillips and John J. Johnson, as aforesaid, unto the defendants, Lee R. Martin and Thomas R. Martin, in trust to secure the sum of two thousand dollars (\$2,000) unto complainant, for which amount the said James A. Wineberger passed his note dated September 14th, 1901, payable to the order of complainant three years after date, with interest at the rate of six per cent per annum, interest payable semi-annually; as will more fully appear by reference to said deed, a copy of which is filed herein, marked Exhibit "A" of complainant's original bill, and is prayed to be read as part hereof. Complainant on said September 14th, 1901, loaned to said James Wineberger, the sum of two thousand dollars (\$2,000), and received from the said James A. Wineberger the said note, which she has now and has always since she received it had in her possession. The interest upon said note has been paid to complainant up to and including September 14th, 1906, but none of the principal of said note
18 has been paid, and the said note is now overdue.

6. Subsequently, on, to-wit, the 15th day of June, 1904, the said Lee R. Martin and the said Thomas R. Martin, by deed dated June 15th, 1904, and recorded June 25th, 1904, in Liber 2826

at folio 153, one of the Land Records of the District of Columbia, released the said deed of trust to them, reciting in said deed of release that the debt secured thereby had been fully paid and the note in evidence thereof cancelled; as will more fully appear by reference to said deed of release, a copy of which is filed herein, marked "Exhibit B" of complainant's original bill, and is prayed to be read as part hereof.

7. Complainant charges that the said release of said deed of trust was made without her consent and without her knowledge or authority in fact or in law; (the fact that such release was made having come to her knowledge for the first time within the last few days), and was made in violation of her rights; and she is advised, and on such advice charges and avers, that she is entitled to have said deed of trust reinstated as a lien upon the said property so as aforesaid conveyed to said Lee R. Martin and Thomas R. Martin, as though it had never been released.

8. Subsequent to the execution by the said James A. Wineberger of the deed of trust mentioned in the fifth paragraph of this bill, and prior to the release of said deed of trust as recited in the sixth paragraph of this bill, on, to-wit, the 8th day of April, 1902, the said
19 James A. Wineberger by deed dated April 8th, 1902, and recorded April 9th, 1902, in Liber 2652 at folio 62 et seq., one of the Land Records of said District, conveyed the real estate then owned by him, and known as lots A and B in F. A. Tschiffely's sub-division of lots in square 88, heretofore mentioned in the third paragraph of this bill, unto the defendants, Mark F. Finley and F. Walter Brandenburg, in trust to secure the sum of seven hundred dollars (\$700) unto said Thomas R. Martin, for which amount the said James A. Wineberger passed his note dated April 8, 1902, payable to the order of said Thomas R. Martin three years after date, with interest at the rate of six per centum per annum, interest payable semi-annually; which said deed of trust has not been released, and which said note for seven hundred dollars (\$700) is now in the possession of Guy H. Johnson and Joseph D. Sullivan as receivers as hereinafter set forth. Complainant is not informed whether said note has been paid or not; or whether or not there was any consideration for said note, and demands strict proof thereof. A copy of the last mentioned deed of trust is filed herein marked "Exhibit C" of complainant's original bill, and is prayed to be read as part hereof.

9. Subsequent to the execution of the deeds of trust mentioned in the fifth and eighth paragraphs of this bill, and prior to the execution of the release mentioned and described in the sixth paragraph of this bill, on, to-wit, the 21st day of February, 1903, the said James A. Wineberger by deed dated February 21st, 1903, and recorded February 24th, 1903, in Liber 2675 at folio 436 et seq., one
20 of the Land Records of said District, conveyed the real estate described in the third and fourth paragraphs of this bill unto the defendants F. Walter Brandenburg and William A. Collis in trust to secure the sum of five hundred dollars (\$500) to Mary S. Hogan, for which amount the said James A. Wineberger passed his note dated February 21st, 1903, payable to the order of said

Mary S. Hogan two years after date with interest at the rate of six per centum per annum, interest payable semi-annually; which said deed of trust was released by the said trustees F. Walter Brandenburg and William A. Collis, by deed of release dated July 1st, 1904, and recorded July 1st, 1904, in Liber 2834 at folio 115 et seq., one of the Land Records of the said District; as will more fully appear by reference to said deed of trust and said deed of release, copies of which are filed herein marked, respectively, Exhibit "D" and Exhibit "E" of complainant's original bill, and are prayed to be read as part hereof. The said note for five hundred dollars (\$500) is now in the possession of the said Guy H. Johnson and Joseph D. Sullivan as receivers as hereinafter set forth; and complainant is not informed whether said note has been paid or not; or whether there was any consideration for said note or not; and demands strict proof thereof.

10. Subsequent to all the deeds hereinbefore mentioned, and subsequent to the release mentioned and described in the sixth paragraph of this bill, and prior to the release mentioned and described in the ninth paragraph of this bill, on, to-wit, the 25th day of June, 1904, the said James A. Wineberger by deed dated June 25th, 1904, and recorded June 25, 1904, in Liber 2826 at folio 150, et seq., one of the Land Records of the said District, conveyed the said real estate described in the third and fourth paragraphs of this bill unto the defendants, Lee R. Martin and Mark F. Finley, in trust to secure the sum of thirty-five hundred dollars (\$3500) to the said Thomas R. Martin, for which amount the said James A. Wineberger passed his note dated June 25th, 1904, payable to the order of said Thomas R. Martin, three years after date, with interest at the rate of six per centum per annum, interest payable semi-annually; which said note for thirty-five hundred dollars (\$3500) is now in the possession of the said Guy H. Johnson and Joseph D. Sullivan, as receivers as hereinafter set forth, and complainant is not informed whether said note has been paid or not; or whether or not there was any consideration for said note; and demands strict proof thereof. Said last mentioned deed of trust is filed herein marked "Exhibit F," of complainant's original bill, and is prayed to be read as part hereof.

11. The defendants Thomas R. Martin and Lee R. Martin were at the time of the execution of the deed of trust to them described in the fifth paragraph of this bill, to-wit, on the 14th day of September, 1901, and have at all times subsequent thereto, and now are copartners in the real estate business, trading as such in the City of Washington, District of Columbia, aforesaid, under the firm name and style of Martin Brothers, and as such copartners were the agents of the said James A. Wineberger in securing for him loans of money upon his real estate herein described, and in preparing the deeds of trust herein mentioned, and in managing the real estate of and for him, from and after the date first mentioned in this paragraph. At the time of the execution of the deed of trust to secure the sum of thirty-five hundred dollars (\$3500) set out and described in the tenth paragraph of this bill, on, to-wit,

June 25th, 1904, the said James A. Wineberger was indebted to said Martin Brothers in the sum of three hundred dollars (\$300), more or less, in addition to the indebtedness evidenced by the notes for two thousand dollars (\$2,000), seven hundred dollars (\$700), and five hundred dollars (\$500), described, respectively, in paragraphs five, eight, and nine of this bill. Complainant believes, and therefore avers, that the said James A. Wineberger executed his note for thirty-five hundred dollars (\$3500), and the deed of trust to secure the payment of the same, both of which are described in the tenth paragraph of this bill, with the intention and for the purpose of putting his indebtedness of \$2,000, \$700, \$500 and \$300, hereinbefore mentioned, into one obligation; though this, if done, was done without the knowledge or consent of complainant.

12. On the 5th day of April, 1907, the defendant Lee R. Martin began suit in equity in this court against the defendant Thomas R. Martin, praying for a dissolution of the partnership mentioned in the eleventh paragraph of this bill, and praying for an accounting and for the appointment of receivers to take charge and possession of the assets and effects of said partnership; which said suit is entitled *Lee R. Martin vs. Thomas R. Martin*, Equity No. 26980 of the

23 docket of this court; in which suit this court passed a decree on the said 5th day of April, 1907, appointing Guy H. Johnson and Joseph D. Sullivan receivers to take charge of the assets and effects of said partnership upon their giving bond in the penalty of five thousand dollars (\$5,000). The said Guy H. Johnson and Joseph D. Sullivan thereupon on the said 5th day of April, 1907, gave the required bond and took charge and possession and now have charge and possession of the assets and effects of said partnership, among which are the notes for \$700, \$500 and \$3500 hereinbefore described in paragraphs eight, nine and ten, respectively, of this bill.

13. The said James A. Wineberger on, to-wit, the 12th day of December, 1905, by deed dated December 12, 1905, and recorded December 12, 1905, in Liber 2980 at folio 393 et seq., one of the Land Records of said District, conveyed all the real estate hereinbefore mentioned and described unto John A. Wineberger and Charles G. Allen, defendants herein, in trust to manage, with power to sell, convey and mortgage, said real estate for the benefit of the said James A. Wineberger, his heirs and assigns; a copy of which said deed is filed herein marked Exhibit "G" of complainant's original bill, and is prayed to be read as part hereof.

14. The said James A. Wineberger departed this life on, to-wit, the third day of February, 1906, leaving a will dated February 9th, 1905, which was duly admitted to probate in this court on the 15th day of March, 1906; and on March 23rd, 1906, letters testamentary
24 were issued under said will to the defendants Andrew H. Ragan and William C. Plenner, the executors named in said will. The said will first directed the payment of all the debts of the testator, secondly bequeathed a bookcase to one Dorothy A. Wall, and thirdly devised and bequeathed all the rest and residue of the real, personal, and mixed estate of the testator to the said

executors in trust to sell and dispose of the same and to divide the proceeds equally into eleven parts, and to pay one part each to Fannie A. Wall, Dorothy A. Wall, Marie Strauss, Andrew H. Ragan, William C. Flenner, and to pay the remaining portion to Marie Strauss for the education of her son, Benjamin A. Strauss, which said last will and testament of the said James A. Wineberger was made prior to the deed of trust to the defendants John A. Wineberger and Charles G. Allen hereof. The said defendants Andrew H. Ragan and William C. Flenner have not distributed the personal estate of said James A. Wineberger, and complainant is informed, and avers, that said Andrew H. Ragan and said William C. Flenner, as executors as aforesaid, have in their possession several hundred dollars of the personal estate of said James A. Wineberger.

15. Complainant has been informed, and avers on information and belief, that the defendant Florence Poole is the holder of a note for thirty-five hundred dollars (\$3500), dated June 25th, 1904, payable to the order of Thomas R. Martin, three (3) years after date, with interest at six per centum (6%), interest payable semi-annually, purporting to have been made by said James A. Wine-

25 berger, and secured by a deed of trust described in the tenth paragraph of this bill. Complainant does not know whether or not the said note held by the said Florence Poole bears the genuine signature of James A. Wineberger, or how the said Florence Poole came into possession of said note, or whether or not the said Florence Poole is an innocent holder for value of said note, but asks for full and complete discovery by the said Florence Poole, as to the manner in which she holds said note, and demands strict proof of its execution by said James A. Wineberger, and of its delivery to her in due course for value, and without notice of any defects therein. Complainant further avers that if said note is genuine it is a duplicate of the note described in the tenth paragraph of this bill now in the possession of the receivers as herein set forth. Complainant further avers that the said note for thirty-five hundred dollars (\$3500) held by the said Florence Poole bears upon it an endorsement showing a credit of one thousand dollars (\$1,000) paid upon the principal of said note. Complainant avers that said note purports to be secured upon the real estate mentioned and described in the third, fourth and tenth paragraphs of this bill. Complainant avers that the interest has not been paid semi-annually on the said note held by the defendant Florence Poole, as the said note, if genuine, provides and requires.

16. Complainant admits, if the note for thirty-five hundred dollars (\$3500) held by the said Florence Poole as set out in the fifteenth paragraph of this bill, is a genuine note made by the
26 said James A. Wineberger, and is secured as it purports to be, that the said Florence Poole is entitled to have the said deed of trust remain as a lien upon the property described herein prior to a lien of complainant upon said property, to the extent of the interest which the said Florence Poole has in said note so as aforesaid held by her; but complainant is advised and therefore avers that she is entitled to have the said Florence Poole first exhaust the real estate

of the said James A. Wineberger, described in the third paragraph of this bill before proceeding to enforce her lien against the property described in the fourth paragraph of this bill.

Wherefore, the premises considered, and complainant being without remedy save in your honorable court, prays as follows:

1. That process may issue against the defendants Thomas R. Martin, Lee R. Martin, Mark F. Finley, William A. Collis, F. Walter Brandenburg, John A. Wineberger, Charles G. Allen, Andrew H. Ragan, William C. Flenner and Florence Poole, commanding them and each of them to appear herein on a day fixed by the court, and to answer the exigencies of this bill.

2. That said defendants and each of them may be required to answer this bill under oath as fully and particularly as if specially interrogated thereto.

3. That said deed of trust to said defendants Thomas R. Martin and Lee R. Martin to secure two thousand dollars to complainant, as described in the fifth paragraph of this bill, may be decreed to be reinstated as a lien upon the real estate therein described, as fully and completely as though no release had been made, subject only to the rights, if any, of the defendant Florence Poole, and that it may be foreclosed by the decree of this court.

4. That the defendants Thomas R. Martin and Lee R. Martin may be enjoined temporarily during the pendency of this suit, and perpetually at the final hearing, from selling, negotiating, or in any manner disposing of the seven hundred, five hundred and thirty-five hundred dollar notes described in the eighth, ninth and tenth paragraphs respectively of this bill.

5. That the defendants John A. Wineberger, and Charles G. Allen may be enjoined temporarily during the pendency of this suit from selling, conveying, mortgaging or in any manner incumbering or disposing of any legal or equitable estate which they may have in the real estate herein described and conveyed to them as set forth in the thirteenth paragraph of this bill.

6. That the defendants Mark F. Finley and F. Walter Brandenburg may be required to execute a release of the deed of trust mentioned in the eighth paragraph of this bill, and that the notes of seven hundred dollars, five hundred dollars, and thirty-five hundred dollars mentioned and described in the eighth, ninth and tenth paragraphs respectively, of this bill, may be cancelled.

7. That the defendants Thomas R. Martin and Lee R. Martin may be removed as trustees under the deed of trust described in the fifth paragraph of this bill, and new trustees appointed by the court in their stead.

8. That the real estate of the said James A. Wineberger described in this bill may be sold under direction of the court, and that if necessary an accounting may be had to determine the rights of complainant, and of the defendant, Florence Poole.

9. That complainant may have judgment as at law against the defendants Thomas R. Martin and Lee R. Martin and against the defendants Andrew H. Ragan and William C. Flenner, as executors

as hereinbefore set forth, for the difference if there be any between the amount which complainant may recover out of the sale of the said real estate of the said James A. Wineberger, and the amount of her note for two thousand dollars (\$2,000) and interest and costs.

6. That complainant may have such other and further relief as the nature of the case may require and to the court may seem proper.

MARION E. J. MARTIN.

JAMES S. EASBY-SMITH,
Solicitor for Complainant.

I, Marion E. J. Martin, on oath say that I have read over the foregoing petition by me subscribed and know the contents thereof; that the matters and things therein stated of my personal knowledge are true, and those stated on information and belief I believe to be true.

MARION E. J. MARTIN.

29 Subscribed and sworn to before me this 30th day of April,
A. D. 1907.

[SEAL.] WALTER S. T. BROWN,
Notary Public, D. C.

Answer of Florence Poole.

Filed May 13, 1907.

* * * * *

The defendant Florence Poole for answer to the amended bill of complaint filed against her and others in the above entitled cause says:

1, 2, 3, and 4. She admits the allegations contained in the first, second, third, and fourth paragraphs of said amended bill to be true, except that she says this defendant now resides in the City of Washington, D. C.

5. She admits the allegations of the fifth paragraph of said bill so far as the making and recording of the deed of trust therein referred to appear of record. This defendant has no knowledge of the loan or advance of money made by the complainant as in said paragraph alleged and calls for proof thereof if the same be deemed material to the right of this defendant.

6 and 7. This defendant admits the execution and recording of the release set forth in the sixth paragraph of said bill but she has no knowledge of the fraudulent character of said release as alleged in the seventh paragraph of said bill and demands proof thereof if the same is deemed material to her rights; and she denies the right of the complainant to have said deed of trust reinstated as a lien on the property thereby conveyed as against the defendant.

8. This defendant admits the execution of the deed of trust

mentioned in the eighth paragraph of said bill and she avers that the note thereby secured was in fact paid, and that it is not entitled to priority over the note held by this defendant even if not paid, because of the matters hereinafter set forth.

9. This defendant admits the execution and recording of the deed of trust and release mentioned in the ninth paragraph of said bill and further says that if the note secured by said deed of trust was not paid she never had any knowledge thereof.

10. This defendant admits the execution and recording of the deed of trust mentioned in the tenth paragraph of said bill to secure James A. Wineberger, dated June 25, 1904, and payable to the order of the defendant Thomas R. Martin three years after date for \$3500 and interest at six per centum per annum payable semi-annually, but she denies that said note is in the possession of Guy H. Johnson and Joseph D. Sullivan, Receivers, and says that the original and genuine note described in said deed of trust is in the possession of this defendant as hereinafter set forth.

11. This defendant has no knowledge of the facts alleged
31 in the eleventh paragraph of said bill except that said Martin Brothers were in the real estate business in the City of Washington as alleged.

12, 13, and 14. Said defendant admits the allegations of the twelfth, thirteenth, and fourteenth paragraphs of said bill.

15 and 16. This defendant admits that she is the holder of a note for \$3500 dated June 25, 1904, payable to the order of Thomas R. Martin three years after date with interest at six per centum per annum payable semi-annually and she avers that said note is the original and genuine note of said James A. Wineberger described in the deed of trust mentioned in the tenth paragraph of said bill and that the alleged note held by said Guy H. Johnson and Joseph D. Sullivan, Receivers, is a spurious or duplicate note. Said note held by this defendant bears the genuine signature of said James A. Wineberger and the genuine signature of said Thomas R. Martin, the payee named in said note, is endorsed on the back thereof. This defendant further avers that said note held by this defendant was sold by said Thomas R. Martin through Martin Brothers to Richard Poole the late husband of this defendant. That at the time of said sale said note bore an endorsement of a credit of \$1000 on account thereof and said Richard Poole paid said Thomas R. Martin Twenty-five hundred Dollars (\$2500) for said note; that said note together with the said deed of trust securing the same, a tax certificate on the property described in said deed of trust, a policy
32 of insurance on said property and a certificate of title showing said deed of trust to be a first lien on said property, were delivered by said Thomas R. Martin to said Richard Poole on the 31st day of July, 1905; that said Richard Poole purchased said note as an investment in due course of business for the sum of \$2500 without notice of any equities thereon and he was a bona fide holder and owner thereof and purchased the same on the representation of said Thomas R. Martin and Martin Brother- that it was a first lien on said property; that said Richard Poole died on the

12" day of January, 1906, and Leonard H. Poole duly qualified as the administrator of his estate; that the estate of said Richard Poole was duly settled by said administrator and the said note was duly delivered by him to this defendant as part of her distributive share of said estate and she is now a bona fide holder and owner of said note and never had any notice of any fact which would impair her title. Said note has not been paid and there is now owing thereon to this defendant the sum of \$2500 with interest thereon at six per cent from the 25th day of June, 1906, the interest due thereon December 25th, 1906, not having been paid. And further answering the defendant says that said notes for \$3500 and \$700 held by said receivers of Martin Brothers are null and void as against this defendant by reason of the said sale by said Thomas R. Martin of the note held by this defendant upon the representation by said Martin Brothers that the same was a first lien on said property.

33 16. The sixteenth paragraph of said bill states a proposition of law which this defendant is advised she is not called upon to answer.

17. Further answering said bill this defendant says she is willing that the real estate described in said bill be sold under the direction of the Court and the proceeds distributed as may be adjudged right and proper.

FLORENCE P. POOLE.

H. W. SOHON, *Solicitor*.

I solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof; that the facts therein stated upon my personal knowledge are true and the facts therein stated on information and belief I believe to be true.

FLORENCE P. POOLE.

Subscribed and sworn to before me this 13" day of May, 1907.

J. WILMER LATIMER,
Notary Public, D. C.

[SEAL.]

Answer of F. W. Brandenburg.

Filed Aug. 2, 1907.

* * * * *

34 This defendant, now and at all times hereafter saving to himself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said complainant's bill of complaint mentioned, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering says:

I. This defendant admits that he is one of the trustees to whom the real estate described in paragraph eight of the complainant's bill was conveyed as therein mentioned, though he says that such

conveyance was made without his knowledge. He also admits the execution of the release described in paragraph nine of said bill.

II. This defendant says he has no desire to continue as trustee under the unreleased trust in the bill of complaint mentioned and asks to be relieved, although he says he is willing to execute a release thereof if this court shall so *acquire*.

And having fully answered, this defendant prays to be hence dismissed, etc.

F. WALTER BRANDENBURG.

DISTRICT OF COLUMBIA, ss:

F. W. Brandenburg upon oath deposes and says that he has read the foregoing answer by him subscribed and knows the contents thereof; that the facts therein stated upon his personal knowledge are true and those stated upon information and belief, he believes to be true.

F. WALTER BRANDENBURG.

35 Subscribed and sworn to before me this 2nd day of August,
A. D. 1907.

JNO. R. YOUNG, *Clerk*.
R. P. BELEW, *Ass't Cl'k*.

Answer of Andrew H. Ragan and William C. Flenner.

Filed Aug. 28, 1907.

* * * * * * *

To the Supreme Court of the District of Columbia, holding an Equity Court:

The Separate Answer of Andrew H. Ragan and William C. Flenner, Executors under the Last Will and Testament of James A. Wineberger, Deceased, to the Amended Bill of Complaint.

These defendants saving and reserving unto themselves all and all manner of benefit of exception to the many errors, uncertainties and imperfections that the said amended bill in the manner and form as the same are therein contained, contains and praying to have the same benefit thereof as if they had specifically demurred to the said amended bill, nevertheless for answer thereunto or to so much and such parts thereof as they are advised it is in any manner necessary or material for them to answer, answer and say:

1, 2, 3, and 4. They admit the allegations contained in the
36 first to the fourth paragraphs inclusive of said amended bill,
to be true.

5. They admit the giving of the deed of trust and the record thereof to secure the note and for the amount as set out in paragraph 5 of said amended bill. They have no knowledge as to the allegation in said paragraph of an alleged loan by complainant

to James A. Wineberger or that complainant received, ever had possession or now has possession of the note mentioned in said paragraph and for that reason they specifically deny said allegation and call for strict proof thereof. They have no personal knowledge up to what time interest, if any, has been paid to complainant upon the note as alleged in said paragraph and they deny that James A. Wineberger during his lifetime or these defendants, representing his estate since his decease, made any payments on account of interest on the note secured by said trust since June 25, 1904. They specifically deny that James A. Wineberger at the time of his death or his estate at the present time, was or is indebted or liable on account of the said note secured by the trust in said paragraph mentioned.

6. They admit the allegations of paragraph 6 of the said amended bill and aver on information and belief that the note secured by the trust which was released by the release set out in said paragraph, in so far as James A. Wineberger, or his estate, was or is liable thereon, was paid and converted with other indebtedness into a new loan of \$3500, set out in paragraph 10 of said amended bill.

37 7. So much of paragraph 7 of said amended bill as relates to the circumstances of the execution of the release or complainant's knowledge with relation thereto, they have no personal knowledge. They, therefore, specifically deny each and every allegation with reference to the same and call for strict proof thereof. As to the last portion of said paragraph, averring that complainant is entitled to have the deed of trust re-instated as a lien and etc., they say, being so advised by counsel, that such allegation is a question of law which they are not required to answer.

8 and 9. They admit the allegations of paragraphs 8 and 9 of said amended bill to be true and aver on information and belief that the notes secured by the trusts mentioned in said paragraphs in so far as James A. Wineberger or his estate was or is liable thereon, was paid and converted with other indebtedness into a new loan of \$3500, set out in paragraph 10 of said amended bill. They specifically deny that James A. Wineberger at the time of his death or his estate at the present time was or is indebted or liable on account of either of said notes in said paragraphs 8 and 9.

10. They admit the allegations of paragraph 10 of said amended bill and on information and belief aver that the deed of trust and note thereby secured were executed and given in payment and settlement of the indebtedness represented by the notes and secured by the trusts set out in paragraphs 5, 8 and 9 of said amended bill.

38 11. They admit that the defendants, Thomas R. and Lee R. Martin were co-partners engaged and doing business under the name of Martin Brothers, as alleged in the 11th paragraph of said amended bill and they admit that said firm were the agents of said James A. Wineberger in his lifetime for the collection of rents as is usual and customary for brokers to do but to the best of their information and belief, they deny that said firm from the date mentioned in said paragraph, or any other date, or at any time, were the agents of said James A. Wineberger for the purpose of securing for him loans from other persons upon his real

estate or in the preparing of deeds of trust as in said paragraph set out and they call for strict proof of said portion of said paragraph denied. These defendants on like information and belief aver the fact to be that the loans represented by the notes and secured by the trusts in paragraphs 5, 8 and 9 and afterwards consolidated and converted into one note and trust as in paragraph 10 of said amended bill is set out, were in fact made by said firm of Martin Brothers as principals to said James A. Wineberger, in so far as the latter was concerned. They admit the indebtedness to said Martin Brothers and the reasons and purposes of the giving of the \$3500 note and trust by the said James A. Wineberger as in the last portion of said paragraph is alleged. They aver on information and belief that thereafter, namely, the 25th of June, 1904, said Wineberger during his lifetime, nor has his estate since his decease paid any interest or made any payment or otherwise recognized any liability on account of the notes for \$2,000, \$700, \$500 or the personal indebtedness of about \$300 as secured by the former deeds of trust and mentioned in said paragraph. They have no knowledge of the allegation that the conversion of said smaller loans into the larger one, was without the knowledge and consent of complainant, which allegation they deny and call for strict proof thereof.

12. They admit the allegations of paragraph 12 of said amended bill, except they deny that as against James A. Wineberger or his estate, the notes for \$700 and \$500 therein mentioned, represents any valid indebtedness or claim against said Wineberger or his estate. They admit the \$3500 note in said paragraph mentioned was an outstanding obligation of said James A. Wineberger at the time of his death and secured by the trust as set out in paragraph 10 of said amended bill.

13. They admit the allegations of paragraph 13 of said amended bill.

14. They admit that the allegations of paragraph 14 of said amended bill are substantially correct. They, however, ask leave, if necessary, to hereafter have the right to refer to the original will of James A. Wineberger, deceased, or a duly certified copy thereof, to be filed in this cause.

15. These defendants have no personal knowledge or information as to the averments of paragraph 15 of said amended bill. They, therefore, specifically deny each and every one of said allegations and they call for strict proof thereof. They deny that the note set out in said paragraph is the genuine note of said James A. Wineberger. They deny that it is secured under the trust or on the property mentioned and described in paragraph 10 of said amended bill. They deny that James A. Wineberger in his lifetime or his estate since his decease, was or is liable on account of said alleged note in said 15th paragraph mentioned. They say that if said alleged note bears an endorsement of \$1,000 as a credit on the principal, the same was never paid nor was intended to be by the said James A. Wineberger in his lifetime or by these defendants representing his estate since his decease. They aver the fact to be that James A. Wineberger during his lifetime nor have

these defendants representing his estate since his decease, never paid anything on account of either principal or interest on said alleged note.

16. These defendants say that the averments of paragraph 16 of said amended bill, so they are advised by counsel are argumentative and conclusions of law which they are not required to answer. However, without waiving this objection, they in answer to said paragraph, adopt, in so far as applicable, the matters and things set out in their answer to the next preceding paragraph and for the reasons and because of the matters therein set out, they deny that the defendant, Florence Poole, is the holder of a genuine note of James A. Wineberger, deceased, nor is entitled to the benefit or protection of the deed of trust and the property on which it is secured as set out in the 10th paragraph of said amended bill.

17. Further answering said bill, these defendants aver that
41 at the time of the making of the note for \$3500 and giving the trust to secure the same by James A. Wineberger on, to wit, the 25th day of June, 1904, he was an old man enfeebled by age being upward of 83 years old, was in poor health and was forgetful of the happening of the occurrence of events of recent dates; that at said time, for some years prior thereto and until shortly before his death he resided in two rooms in the second-story in one of the small buildings in the real estate described in paragraph 4 of said amended bill.

18. Further answering said bill these defendants say that they are willing that the real estate described in the bill of complaint be sold under the direction of this Honorable Court and the proceeds distributed under its direction as may be adjudged right and proper. They further say that they believe it to be to the interest and advantage of all concerned that said sale should be made as expeditiously as possible.

And now having fully answered and without waiving the objection hereinbefore reserved as if they had filed a formal demurrer to said amended bill, but insisting upon the same, they pray to be hence dismissed with their reasonable costs in this behalf most wrongfully sustained.

ANDREW H. RAGAN,
WILLIAM C. FLENNER,

Executors of the Will of James A. Wineberger, Deceased.

FRED McKEE,
W. MOSBY WILLIAMS,
Solicitors for Defendants.

42 DISTRICT OF COLUMBIA, ss:

We do solemnly swear that we have heard read the foregoing answer by us subscribed as executors and know the contents thereof; that the facts therein stated upon our personal knowledge are true and the facts therein stated upon information and belief, we verily believe to be true.

ANDREW H. RAGAN.
WILLIAM C. FLENNER.

Subscribed and sworn to before me this 24th day of August, 1907.

[SEAL.]

THOMAS P. WOODWARD.

Answer of Charles G. Allen.

Filed Sep. 17, 1907.

* * * * *

To the Supreme Court of the District of Columbia, holding an Equity Court:

The Separate Answer of Charles G. Allen, One of the Trustees under the Deed in Trust from James A. Wineberger, to the Amended Bill of Complaint.

This defendant saving and reserving unto himself all and all manner of benefit of exception to the many errors, uncertainties and imperfections that the said amended bill in the
43 manner and form as the same are therein contained, contains and praying to have the same benefit thereof as if he had specifically demurred to the said amended bill, nevertheless for answer thereunto or to so much and such parts thereof as he is advised it is in any manner necessary or material for him to answer, answers and says:

1 and 2. He admits paragraph 1 of said amended bill and so much of paragraph 2 as refers to this defendant, his co-trustee, John A. Wineberger, and to Ragan and Flenner, as executors and as to the other matters he calls for proof if necessary.

3-12. He has no personal knowledge or information as to the allegations of paragraphs 3 to 12 inclusive of said amended bill other than as therein set out. He therefore neither admits nor denies the same. If material, however, to the rights of this defendant, he calls for strict proof thereof.

13. He admits the execution and record of the deed in trust to himself and defendant, John A. Wineberger, by the late James A. Wineberger as in paragraph 13 of said amended bill alleged. He, however, asks leave, if necessary, to hereafter refer to the original deed or a duly certified copy to be filed in this cause. Further answering said paragraph, this defendant says that he has never been called upon to exercise or perform the trust reposed in this defendant and co-trustee by said deed, but that he has always been ready and is now ready and willing to discharge the trust thereby
44 created after the instruction and with the guidance and direction of this Honorable Court in the premises.

14. This defendant admits the death of James A. Wineberger, the leaving of a will, its probate and appointment of the executors as in paragraph 14 of said amended bill alleged. As to other matters therein set out he has no personal knowledge.

15 and 16. He has no personal knowledge or information as to the allegations of paragraphs 15 and 16 of said amended bill other than as therein set out. He therefore neither admits nor denies

the same. If material, however, to the rights of this defendant, he calls for strict proof thereof.

Further answering said bill this defendant says that he does not object to the sale of the real estate described in the bill of complaint under the direction of this Honorable Court and the proceeds distributed under its direction as may be adjudged right and proper and he says that he believes it to be to the interest and advantage of all concerned that said sale should be made as expeditiously as possible.

And now having fully answered and without waiving the objection hereinbefore reserved as if he had filed a formal demurrer to said amended bill, but insisting upon the same, he prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

CHARLES G. ALLEN, *Trustee.*

W. MOSBY WILLIAMS,
FRED McKEE,
Solicitors for Defendant.

45 DISTRICT OF COLUMBIA, ss:

I do solemnly swear that I have read the foregoing answer by me subscribed as trustee and know the contents thereof, that the facts therein stated upon my personal knowledge are true and the facts therein stated upon information and belief, I verily believe to be true.

CHARLES G. ALLEN.

Subscribed and sworn to before me this 6th day of September, 1907.

THOMAS P. WOODWARD,
Notary Public.

[SEAL.]

Decree Pro Confesso.

Filed Dec. 16, 1908.

* * * * *

It appearing to the Court that Thomas R. Martin, one of the defendants in the above entitled cause was duly served with process on the 13th day of July, 1908; and that the said defendant has not caused his appearance to be entered herein, nor answered the original or the amended bill filed herein as required by law and the rules of this court; it is this 16th day of December, A. D., 1908 adjudged, ordered and decreed that the original and the amended bill in this cause be taken as confessed by said defendant, Thomas R. Martin.

JOB BARNARD, *Justice.*

Answer of Lee R. Martin.

Filed Feb. 26, 1909.

* * * * *

The separate answer of Lee R. Martin, as individual and also as trustee, under the special trust described in the amended bill of complaint in the above entitled cause, respectfully shows to the court as follows:

This defendant saving and reserving unto himself all exceptions to the many errors, uncertainties and imperfections in said amended bill contained, and praying to have the same benefits thereof as if he had demurred to the said amended bill, to so much and such parts thereof as he is advised it is necessary for him to answer, answering says:

1 and 2. He admits paragraph 1 and so much of paragraph 2 as refers to this defendant.

3 and 4. He has no knowledge of the allegations of paragraphs 3 and 4 of said amended bill and therefore neither admits nor denies the same.

5. Answering the allegations contained in paragraph 5 of said amended bill he admits all of same with the exception of the allegations that no interest has been paid upon the note therein mentioned since September 14, 1906, and that none of the principal of said note has been paid. Having no knowledge as to said last mentioned allegations he neither admits nor denies them.

6. He admits all of paragraph 6 of said amended bill.

47 7. He admits that the complainant had no knowledge of the execution of the release and deed of trust therein mentioned, nor did she directly consent, or authorize, this defendant to release same. He avers that he executed the said release as trustee upon information given to him by his co-trustee to the effect that a new trust and new notes had been given by the said Wineberger to be substituted in lieu of the note secured by the trust then being released. The balance of said paragraph 6, defendant is advised, is not necessary to answer as it states a conclusion of law.

8 and 9. This defendant has no knowledge of the allegations contained in paragraphs 8 and 9 of the amended bill and therefore neither admits nor denies them.

10. This defendant admits the allegation contained in paragraph 10 of the amended bill and says at the time of the execution of the said deed of trust described in said paragraph this defendant was informed by the said Thomas R. Martin that said deed of trust and notes taken thereunder were to secure the complainant for the moneys loaned by said complainant to said Wineberger in lieu of the note and deed of trust theretofore in her possession. This defendant has no knowledge however, as to whether or not the \$3500 note described in said 10th paragraph is, or is not, in the possession of said Johnson and Sullivan, as receivers.

11. This defendant admits that he and said Thomas R. Martin were partners in the real estate business and such firm was the

48 agent for James W. Wineberger at the time of the execution of the said deed of trust to secure the \$3500. that said Wineberger was indebted to the Martin Bros. But this defendant having no active management of the business of said Wineberger does not know the extent of his indebtedness to said firm and does not know for what purpose said Wineberger executed said note for \$3500, and the deed of trust securing the same, unless it was for the purpose of securing the complainant as aforesaid.

12. Defendant admits the allegations of the 12th paragraph of the amended bill, but says he has no knowledge in whose possession the said notes for \$700, \$500 and \$3500 are.

13, 14 and 15. This defendant has no knowledge of the allegations set forth in paragraphs 13, 14 and 15 and therefore neither admits nor denies them.

16. Defendant neither admits nor denies the allegations contained in the 16th paragraph of said bill, as he is advised they merely state conclusions of law.

Further answering this defendant says he has no desire to continue as trustee under any of the trusts in the bill of complaint mentioned and asks to be relieved as trustee in it and all trusts, although he says he is willing to perform such duties and execute such releases as this court may order.

And having fully answered, prays to be hence dismissed with his costs in and about this suit.

LEE R. MARTIN,
By JOHN C. GITTINGS, *Att'y.*

GITTINGS & CHAMBERLIN,
Solicitors for Defendant, Lee R. Martin.

49 *Answer of John A. Wineberger.*

Filed May 7, 1909.

* * * * *

To the Supreme Court of the District of Columbia, holding an Equity Court.

The separate answer of John A. Wineberger, one of the trustees under the deed in trust from James A. Wineberger to the amended bill of complaint.

This defendant saving and reserving unto himself all and all manner of benefit of exception to the many errors, uncertainties and imperfections that the said amended bill in the manner and form as the same are therein contained, contains, and praying to have the same benefit thereof as if he had specifically demurred to the said amended bill, nevertheless for answer thereunto or to so much and such parts thereof as he is advised it is in any manner necessary or material for him to answer, answers and says:

1 and 2. He admits paragraph 1 of said amended bill and so much of paragraph 2 as refers to this defendant, his co-trustee, Charles G.

Allen, and to Ragan and Flenner, as executors, and as to the other matters he calls for proof if necessary.

3-12. He has no personal knowledge or information as to the allegations of paragraphs 3 to 12 inclusive of said amended bill other than as therein set out. He therefore neither admits nor denies the same. If material, however, to the rights of this defendant,
50 he calls for strict proof thereof.

13. He admits the execution and record of the deed in trust to himself and defendant, Charles G. Allen, by the late James A. Wineberger, as in paragraph 13 of said amended bill alleged. He, however, asks leave, if necessary, to hereafter refer to the original deed or a duly certified copy to be filed in this cause. Further answering said paragraph, this defendant says the he has never been called upon to exercise or perform the trust reposed in this defendant and co-trustee by said deed, but that he has always been ready and is now ready and willing to discharge the trust thereby created after the instruction and with the guidance and direction of this Honorable Court in the premises.

14. This defendant admits the death of James A. Wineberger, the leaving of a will, its probate and appointment of the executors as in paragraph 14 of said amended bill alleged. As to other matters therein set out he has no personal knowledge.

15 and 16. He has no personal knowledge or information as to the allegations of paragraphs 15 and 16 of said amended bill other than as therein set out. He therefore neither admits nor denies the same. If material, however, to the rights of this defendant, he calls for strict proof thereof.

Further answering said bill this defendant says that he does not object to the sale of the real estate described in the bill of complaint under the direction of this Honorable Court and the proceeds
51 distributed under its direction as may be adjudged right and proper and he says that he believes it to be to the interest and advantage of all concerned that said sale should be made as expeditiously as possible.

And now having fully answered and without waiving the objection hereinbefore reserved as if he has filed a formal demurrer to said amended bill, but insisting upon the same, he prays to be hence dismissed with his reasonable costs in this behalf most wrongfully sustained.

JOHN A. WINEBERGER, *Trustee.*

MADDOX AND GATLEY,
Solicitors for Defendant.

DISTRICT OF COLUMBIA, ss:

I do solemnly swear that I have read over the foregoing answer by me subscribed as trustee and know the contents thereof; that the facts therein stated upon my personal knowledge are true and the facts therein stated upon information and belief, I verily believe to be true.

JOHN A. WINEBERGER.

Subscribed and sworn to before me this 5th day of April, A. D. 1909.

J. R. YOUNG, *Clk*,
By F. E. CUNNINGHAM,
Ass't Clk.

52

Supplemental Bill of Complaint.

Filed Jun- 21, 1909.

* * * * *

By leave of the Court in this behalf first had and obtained the complainant, Marian E. J. Martin, hereby amends and supplements her original and amended bills of complaint filed in this cause on April 25, 1907, and May 8, 1907, respectively, as follows:

By adding as a defendant A. Coulter Wells, trustee in bankruptcy of Martin Brothers, and by adding the following paragraphs numbered seventeen and eighteen.

17. Since the filing of the said original and amended bills of complaint in this cause, to-wit, on the 12th day of June, 1907, the defendant A. Coulter Wells was elected and qualified as trustee in bankruptcy of the firm of Martin Brothers, consisting of Thomas R. Martin and Lee R. Martin as hereinbefore set out, and since said date has been, and now is performing the duties of such trustee, and is sued in his capacity as such trustee.

18. After the filing of the said original and amended bills herein on, to-wit the 6th day of May, 1907, the said Guy H. Johnson and Joseph D. Sullivan, receivers as set out in said original and amended bills, deposited with the Clerk of this Court pursuant to the order of this court passed in equity cause No. 26980, entitled Lee R. Martin vs. Thomas R. Martin, the promissory note for \$700.00 mentioned in paragraph eight of said amended bill, and the promissory
53 note for \$500.00 mentioned in paragraph nine of said amended bill, and the promissory note for \$3500.00 mentioned in paragraph ten of said amended bill, and the said three promissory notes are now on file with the Clerk of this Court among the papers in said Equity cause No. 26,980.

Wherefore the premises considered your Complainant prays:

1. That process may issue against the said defendant A. Coulter Wells, trustee, commanding him to appear herein on a day fixed by the Court, and to answer the exigencies of the said original and amended bills and this supplemental bill of complaint.

2. That the said defendant A. Coulter Wells, trustee, may be required to answer the said original, amended and supplemental bills under oath as fully and particularly as if specially interrogated thereto.

3. That the said three promissory notes for \$700.00, \$500.00 and \$3500.00 respectively mentioned and described in the eighth, ninth and tenth paragraphs of the amended bill of complaint hereon on May 8, 1907, and also mentioned in paragraph numbered eighteen

of this supplemental bill of complaint, may be canceled, and that the said defendant A. Coulter Wells trustee may be decreed to have no right in or to said notes or any of them.

4. That complainant may have such other and further relief against said A. Coulter Wells, trustee as is prayed against the other defendants herein, in so far as such relief against said defendant A.

54 Coulter Wells trustee may be essential to the obtaining of complete relief by this complainant.

5. That complainant may have such other and further relief as the nature of the case may require and to the Court may seem meet and proper.

MARIAN E. J. MARTIN.

J. S. EASBY-SMITH,
Solicitor for Complainant.

I, Marian E. J. Martin do solemnly swear that I have read over the foregoing amendment and supplement to the original and amended bills of complaint subscribed by me and know the contents thereof, that the matters and things therein stated of my own personal knowledge are true, and those stated upon information and belief, I believe to be true.

MARIAN E. J. MARTIN.

Subscribed and sworn to before me this 19th day of June, A. D., 1909.

[SEAL.]

G. WILLIAM CRANE,
Notary Public, D. C.

(Endorsed.)

Leave to file the within supplemental bill hereby granted this 21st day of June, 1909.

WENDELL P. STAFFORD, *Justice.*

55

Answer of A. Coulter Wells.

Filed Jun- 29, 1909.

* * * * *

The separate answer of A. Coulter Wells, trustee respectfully shows to the Court as follows:

This defendant saving and reserving unto himself all benefit of exception, or otherwise as may be had or taken to the many errors, uncertainties and imperfections in the original, amended and supplemental bills contained, and praying to have the same benefits thereof as if he had specially demurred thereto to so much and such parts thereof as he is advised it is necessary for him to answer, answering says:

1 to 16. He has no knowledge of the allegations contained in the paragraphs numbered one to sixteen of the original and amended bills of complaint, and neither admits nor denies them, but if they be material calls for strict proof thereof.

17 & 18. Answering the allegations contained in paragraphs numbered seventeen and eighteen of the supplemental bill filed herein on the 21st day of June, 1909, he admits the truth thereof.

And now having fully answered he prays to be hence dismissed with his reasonable costs in this behalf most unjustly sustained.

A. COULTER WELLS.

JOSEPH D. SULLIVAN,
Solicitor for Defendant.

56 DISTRICT OF COLUMBIA, ss:

I, A. Coulter Wells do solemnly swear that I have read the foregoing answer by me subscribed and know the contents thereof; that the matters and things therein stated of my own personal knowledge are true, and those stated upon information and belief, I believe to be true.

A. COULTER WELLS.

Subscribed and sworn to before me this 29th day of June, A. D., 1909.

[SEAL.]

F. A. FENNING,
Notary Public, D. C.

Answer of Mark F. Finley to the Amended Bill of Complaint.

Filed Jul- 7, 1909.

* * * * *

This defendant, now and at all times hereafter saving to himself all and all manner of benefit of exception or otherwise that can or may be had or taken to the many errors, uncertainties and imperfections in the said complainant's amended bill of complaint mentioned, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering says:

57 1 & 2. This defendant admits the allegations of the first paragraph, and so much of the second paragraph as relates to himself, but has no knowledge of the other allegations in said second paragraph.

3, 4, 5, 6, & 7. This defendant has no knowledge of the allegations contained in paragraphs three to seven inclusive and neither admits nor denies them.

8. This defendant admits that he is one of the trustees to whom the real estate described in paragraph eight of the complainant's bill was conveyed as therein mentioned, though he says that such conveyance was made without his knowledge.

9. This defendant has no knowledge of the allegations contained in the ninth paragraph of said bill of complaint.

10. This defendant admits that he is one of the trustees to whom the real estate described in paragraph ten of the complainant's bill

was conveyed as therein mentioned, though he says that such conveyance was made without his knowledge.

11, 12, 13, 14, 15 & 16. This defendant says that he has no knowledge of the allegations contained in paragraphs eleven to sixteen of said bill of complaint.

Further answering this defendant says, that he has no desire to continue as trustee under the deeds of trust mentioned in the eighth and tenth paragraphs of said bill, and asks to be relieved as such trustee, and that some other person or persons be substituted by the Court in his place and stead, although he says he is willing
58 to carry out such trusts if this court shall so require.

And now having fully answered this defendant prays to be hence dismissed with his costs in this behalf most unjustly sustained.

MARK F. FINLEY.

DISTRICT OF COLUMBIA, ss:

I, Mark F. Finley do solemnly swear that I have read over the foregoing answer by me subscribed and know the contents thereof, that the matters and things therein stated of my own personal knowledge are true, and those stated upon information and belief, I believe to be true.

MARK F. FINLEY.

Subscribed and sworn to before me this 1st day of June, 1909.

[SEAL.]

EDWARD F. RIGGS,
Notary Public, D. C.

Answer of William A. Collis to the Amended Bill of Complaint.

Filed Jul- 7, 1909.

* * * * *

This defendant, now and at all times hereafter saving to himself all and all manner of benefit of exception or otherwise that
59 can or may be had or taken to the many errors, uncertainties and imperfections in the said complainant's amended bill of complaint mentioned, for answer thereto or to so much thereof as this defendant is advised it is material or necessary for him to make answer to, answering says:

1 & 2. This defendant admits the allegations contained in the first paragraph of said bill of complaint, and so much of the second paragraph as relates to himself, but had no knowledge of the other allegations in said paragraph.

3, 4, 5, 6, 7 & 8. This defendant has no knowledge of the allegations contained in paragraphs three to eight inclusive of said bill of complaint, and therefore neither admits nor denies them.

9. This defendant admits that he was one of the trustees to whom the real estate described in paragraph nine of the complainant's bill was conveyed as therein mentioned, though he says that such conveyance was made without his knowledge, and he also admits

the execution of the release described in paragraph nine of said bill.

10, 11, 12, 13, 14, 15 & 16. This defendant says that he has no knowledge of the allegations contained in paragraphs numbered ten to sixteen of said bill of complaint, and therefore neither admits nor denies them.

And having fully answered this defendant prays to be hence dismissed with his costs in this behalf most unjustly sustained.

WILLIAM A. COLLIS.

60 DISTRICT OF COLUMBIA, ss:

I, William A. Collis do solemnly swear that I have read over the foregoing answer by me subscribed and know the contents thereof, that the matters and things therein stated of my own personal knowledge are true and those stated upon information and belief, I believe to be true.

WILLIAM A. COLLIS.

Subscribed and sworn to before me this 11th day of June, A. D. 1909.

[SEAL.]

J. WM. REILY,
Notary Public, D. C.

Replication.

Filed Aug. 23, 1909.

* * * * *

Now comes the complainant, Marian E. J. Martin, and joins issue with the defendants on their answers to the original, amended, and supplemental bills in the above-entitled cause.

J. S. EASBY-SMITH,
Solicitor for Complainant.

61 *Decree Appointing Trustees to Sell Real Estate.*

Filed Oct. 20, 1909.

* * * * *

This cause coming on to be heard at this term upon the original, amended and supplemental bills filed herein and of the decree *pro confesso* against the defendant, Thomas R. Martin, and of the answers of all the other defendants, and having been submitted and considered by the Court, it is by the Court this twentieth day of October, A. D., 1909—

Adjudged, ordered and decreed, that Henry W. Sohon and Fred McKee be, and they hereby are, substituted and appointed as trustees in the place and stead of the defendants Lee R. Martin and Mark F. Finley, under the deed of trust dated June 25, 1904, and recorded the same day in Liber 2826, Folio 150 *et seq.*, one of the land records of the District of Columbia, mentioned and described in the tenth para-

graph of the original and of the amended bills of complaint herein, and it is further ordered that said trustees, Henry W. Sohon and Fred McKee, after giving bond in the penal sum of Five thousand Dollars (\$5000.00), conditioned for the faithful performance of the trust reposed in them by this decree, or which may be reposed in them by any further order or decree in the premises, shall sell the real estate described in said bills of complaint and in said deed of trust, namely, Lots A and B in Frederick A. Tschiffely's subdivision of Lots twenty (20), twenty-two (22) and twenty-three (23) in Square eighty-eight (88) in the City of Washington, District of Columbia, as per plat recorded in the office of the Surveyor of the District of Columbia in Liber W. F. at Folio 168, and Lot thirteen (13) in James A. Wineberger's subdivision of the north half of Lot four (4) in Square fifty-six (56) in the City of Washington, District of Columbia, as said subdivision is recorded in the office of the Surveyor of the District of Columbia in Book R. L. H., page 238.

It is further ordered that said trustees shall sell the said real estate at public auction and shall comply with the provisions of Equity Rule No. 74 of this Court, and that advertisement of said sale shall be made in the Evening Star newspaper.

It is further ordered and decreed that said sale shall be made free and clear of all claims by the parties to this suit and that said trustees shall report the sale or sales made by them to the Court and that the net proceeds of sale after the payment of taxes due on said property to the day of sale, trustees' commissions, and other expenses of sale, shall be held by said trustees in lieu of the property sold and be subject to the further order or final decree in this cause determining the rights of the parties to this cause which are to be preserved against said fund instead of said real estate; Provided, that said sale shall not affect the question of the running of interest on the debt, if any, secured by said deed of trust.

THOS. H. ANDERSON, *Justice*.

63

Memorandum.

October 22, 1909.—Trustees' bond approved and filed.

Report of Trustees.

Filed Mar. 23, 1910.

* * * * *

Fred McKee and Henry W. Sohon, trustees in the above entitled cause, report to the Court that in pursuance of the decree in said cause, and after giving bond as required by said decree and after advertising thereof for ten days in the Evening Star a copy of which advertisement is attached hereto as part hereof, they offered for sale the property decreed to be sold at public auction in front of the premises on Thursday, November 4, 1909 and sold lots A and B in

Frederick A. Tschiffely's subdivision of lots 20, 22 and 23 in square 88 as per plat recorded in book W. F., page 168 of the records of the surveyor's office for the District of Columbia to William H. Saunders for thirty-two cents per square foot or a total of \$1498.88 for the 4684 square feet contained in said lots; Said William H. Saunders has assigned his purchase to Nellie M. L. Jenkins, said

assignment being attached hereto. It turns out however upon
64 examination of the title to said property by the Lawyers'

Title Insurance Company that these trustees can convey only a tax title coupled with adverse possession and said purchaser and such allowance be made. If the Court makes such allowance out of \$150.00 is made to perfect the title. These trustees recommend that such allowance be made. If the Court makes such allowance out of the cash payment the purchaser will pay one third cash and the balance in one and two years as provided in the decree of sale. Said trustees also sold lot 13 in James A. Wineberger's subdivision of north half of lot 4 in square 56 as per plat recorded in book R. L. H. page 238 of said surveyor's office records, to Grayson L. Thorton for \$2100. It turns out, however, upon examination of the title to said property by the Lawyers' Title Insurance Company that the title which these trustees can convey is only a possessory title, and inasumch as these trustees offered a good title or no sale the purchaser refuses to take the property, his letter to that effect being filed herewith. These trustees, however, have received and submit an offer of F. Walter Bradenburg to purchase said property for \$2000 cash, provided he is allowed the sum of Forty Dollars (\$40.) for insuring his title against the possibility of issue of the devisees of Christopher Cammack who is now without issue but still living, it appearing from the will of Christopher Cammack, who formerly owned said property that such issue would take good title to said property if any be born. Said trustees recommend that said offer be
65 accepted with said allowance of Forty Dollars (\$40.). Said Trustees have complied with the provisions of Rule — of this Court regulating sales by Trustees.

H. W. SOHON.
FRED McKEE.

We solemnly swear that we have read the foregoing report by us subscribed and know the contents thereof; that the facts therein stated upon our personal knowledge are true; and the facts therein stated upon information and belief we believe to be true.

H. W. SOHON.
FRED McKEE.

Subscribed and sworn to before me this 23 day of March, 1910.

J. R. YOUNG, *Clk*,
By F. E. CUNNINGHAM,
Ass't Clk.

66

Order Ratifying Sale.

Filed Mar. 23, 1910.

* * * * *

Upon consideration of the report of Fred McKee and Henry W. Sohon trustees filed herein it is this 23d day of March, 1910, adjudged, ordered and decreed that the sales reported by said trustees be and the same are hereby finally ratified and confirmed and the trustees herein upon full compliance with the terms of sale by the purchasers and not before are hereby authorized and directed to make a conveyance in the usual form to Nellie M. L. Jenkins for lots A and B in Square 88 and to F. Walter Brandenburg for lot 13 in Square 56, as said lots are more fully described in said report.

It is also further ordered that said Trustees be and they are hereby authorized and directed to allow to said Nellie M. L. Jenkins out of the proceeds of the sale the sum of \$150 for the purpose of perfecting the title to said lots A and B in Square 88, and pay to the Columbia and Real Estate Title Insurance Companies the sum of \$40 for insuring the title of said lot 13 in Square 56 against the possibility of issue of the devisees of Christopher Cammack, as in said report more fully set out and upon so doing said trustees shall have credit therefor in their account.

By the Court:

JOB BARNARD, *Justice.*

67

I consent to the foregoing decree:

JAMES S. EASBY-SMITH,
Att'y for Pl'tf.
H. W. SOHON,
Att'y for Florence Poole.
FRED McKEE,
Att'y for Ragan & Flenner, Tr's.

Report of Trustees.

Filed Apr. 6, 1910.

* * * * *

Henry W. Sohon and Fred McKee report to the Court that pursuant to the order finally ratifying the sales they have conveyed to F. Walter Brandenburg lot 13 in square 56 and to Nellie M. L. Jenkins lots A and B in square 88. They adjusted taxes to date of sale with the purchasers and have paid the expenses of sale and their account as trustees stands as follows:

Dr.	To proceeds of the sale to F. W. Brandenburg	\$2,000.	
	To proceeds of sale to Nellie M. L. Jenkins:		
	Cash	\$499.62	
	2 notes	999.26	
		<hr/>	1,498.88
Cr.	Allowance to Nellie M. L. Jenkins to perfect title		150.
	Allowance to F. W. Brandenburg to insure title.....		40.
	Allowance to Nellie M. L. Jenkins for part taxes, year 1910.....		9.20
68	Allowance to F. W. Brandenburg for part taxes, year 1910.....		25.74
	Paid Evening Star for advertising sale...		52.08
	Paid Adam A. Weschler auctioneer for sales		20.
	Paid R. Es. & Ct. Record for advertising sale		1.
	Paid for postal cards advertising sale.....		2.50
	Trustees' commissions as per rule of Court		134.96
Balance—	Applicable to cost of suit and claims of parties:		
	Cash	\$2,064.14	
	Notes	999.26	3,063.40
		<hr/>	<hr/>
		\$3,498.88	\$3,498.88

DISTRICT OF COLUMBIA, ss:

We solemnly swear that the foregoing account is just and true and that we have paid or allowed the several sums for which credit is claimed therein.

HENRY W. SOHON.
FRED McKEE.

Subscribed and sworn to before me this 6th day of April, A. D. 1910.

J. R. YOUNG, *Clk*,
By F. E. CUNNINGHAM,
Ass't Clk.

69 *Stipulation and Agreed Statement of Facts.*

Filed Apr. 27, 1910.

* * * * * *

It is stipulated and agreed by and between the plaintiff Marian E. J. Martin, and the defendants, Florence Poole and A. Coulter

Wells, trustee, that the above-entitled cause shall be heard at the May term 1910 of this court and the issues between them decided upon the amended and supplemental bills of said plaintiff and the answers of said defendants filed in this cause, and the following agreed statement of facts and the exhibits filed herewith in lieu of testimony:

It is agreed by and between said plaintiff and said defendants that the statements of fact contained in the first four paragraphs of said amended bill are true, except that the said defendant Florence Poole is not a resident of the State of Maryland, but is a resident of the District of Columbia.

The statements of fact contained in the fifth paragraph of said amended bill are admitted to be true, and it is further admitted that the note filed herewith marked "Plaintiff's Exhibit No. 1" and the deed of trust filed herewith marked "Plaintiff's Exhibit No. 2" are the original note and deed of trust described in said fifth paragraph of said amended bill, the endorsements of payments of interest on said note being in the handwriting of the plaintiff.

70 The statements of fact contained in the sixth and seventh paragraphs of said amended bill are admitted to be true, except that said defendant Florence Poole denies the conclusions of law stated in said seventh paragraph to the effect that the release therein mentioned was executed without authority in law and that the plaintiff is entitled to have the said deed of trust described in the fifth paragraph reinstated; but said defendant Florence Poole admits that said release was made without plaintiff's knowledge or authority in fact.

So far as this hearing is concerned, it is admitted that the facts as alleged in the eighth and ninth paragraphs of said amended bill and in the eighth and ninth paragraphs of the answer of the said defendant Florence Poole, are true.

It is admitted that the statements of fact contained in the tenth paragraph of said amended bill are true, except that said note for \$3,500 described in said tenth paragraph is in the possession of the said defendant Florence Poole, as stated in the tenth paragraph of her said answer, and that the note for \$3,500 alleged to be in the possession of said Guy H. Johnson and Joseph D. Sullivan is not the original or genuine note for \$3,500. It is also admitted that the Thomas R. Martin to whom the said \$3,500 note is payable is the same Thomas R. Martin named as one of the trustees in the deed of trust described in the fifth and eleventh paragraphs of said amended bill.

71 The statements of fact set out in the eleventh, twelfth, thirteenth and fourteenth paragraphs of said amended bill are admitted to be true.

It is admitted that the statements of fact contained in the fifteenth paragraph of said amended bill are true. It is further admitted that the said note for \$3,500 described in said fifteenth paragraph is the original note secured by the deed of trust mentioned in the tenth paragraph of said amended bill. It is further admitted that said note for \$3,500 held by the defendant Florence Poole bears the

genuine signature of said James A. Wineberger and the genuine endorsement of Thomas R. Martin, the payee. It is further admitted that said note which is filed herewith marked "Defendant's Exhibit No. 1" was purchased from said Thomas R. Martin through said Martin Bros. by Richard Poole, the late husband of the defendant Florence Poole under the following circumstances, that is to say, in the month of July, 1905, the said Richard Poole applied to said Martin Bros. for an investment for \$2,500 of his money, and said Martin Bros. offered to him as an investment the said note for \$3,500 bearing an endorsement on the back that \$1,000 had been paid upon the principal of said note. That on or about July 25, 1905, the said Richard Poole paid the said Martin Bros. \$2,475 for said note and received the same, together with a certificate of title signed by J. Thomas Sothoron, which is filed herewith and marked "Defendant's Exhibit No. 2." That the endorsement of interest paid January 5, 1906, now appearing on the back of said note for \$3,500 is in the handwriting of said Richard Poole; and

72 the endorsement of interest paid September 18, 1906, is in the handwriting of Leonard H. Poole, administrator of Richard Poole. That at the same time, the said Richard Poole received a tax certificate, a policy of insurance and the deed of trust securing the said note, which said papers are filed herewith marked respectively, "Defendant's Exhibit No. 3," "Defendant's Exhibit No. 4," and "Defendant's Exhibit No. 5." That in the course of the negotiations for the purchase of said note, said Richard Poole received four certain letters from said Martin Bros. which are attached hereto marked "Defendant's Exhibit No. 6," "Defendant's Exhibit No. 7," "Defendant's Exhibit No. 8," and "Defendant's Exhibit No. 9." That said defendant Florence Poole received said note as part of her distributive share of the estate of said Richard Poole who died on or about the twelfth day of January, 1906. It is also admitted that the plaintiff never had any knowledge of the existence of said \$3,500 note, or the deed of trust given to secure the same until the early part of the year 1907, a few days before the filing of her original bill in this cause; and that neither said Richard Poole nor said Florence Poole had any actual knowledge that the note for \$2,000 mentioned in the fifth paragraph of said amended bill had not been paid and was still in the possession of the plaintiff, nor that the release of the trust securing said \$2,000 note was made without her knowledge and in fraud of her rights, nor that there were any equities which might be asserted against said note for \$2,500. It is also admitted that no interest has been paid upon

73 the said note for \$3,500 held by the defendant Florence Poole, except the interest endorsed on the back of said note.

It is further admitted that nothing has been paid to the plaintiff on account of the principal of the note for \$2,000 held by her and that nothing has been paid to said Richard Poole or said Florence Poole or to any other person on account of the principal of said note for \$3,500 held by the said defendant Florence Poole, except the payment of \$1,000 endorsed upon the back of said note for \$3,500.

It is further admitted that the estate of the said James A. Wineberger, deceased, is insolvent and that the only recourse which either the said plaintiff or the said defendant Florence Poole has is against the said real estate which has been sold by order of this court, and the proceeds of said sale ordered to be held by the trustees in lieu of said real estate, the rights of the said parties being preserved against said fund instead of said real estate.

Referring to the allegations contained in the sixteenth paragraph of said amended bill and in the sixteenth paragraph of the answer of the said defendant Florence Poole, it is admitted that the rights of the said defendant Florence Poole are superior to the rights of the said plaintiff as against that portion of said fund which is the proceeds of the sale of the property described in paragraph 3 of said amended bill; the plaintiff's note for \$2,000 not having
74 been secured on said real estate, but only upon the real estate described in the fourth paragraph of said amended bill.

It is further stipulated and agreed that the statements of fact contained in the seventeenth and eighteenth paragraphs of the supplemental bill are true, and that the notes for \$500, \$700 and \$3,500 mentioned in the eighth, ninth and tenth paragraphs of the amended bill and in the eighteenth paragraph of the supplemental bill shall be canceled and held for naught.

J. S. EASBY-SMITH,

Attorney for Plaintiff.

H. W. SOHON,

Attorney for Defendant Florence Poole.

A. COULTER WELLS,

Trustee, Martin Bros., Bankrupt.

75

PLAINTIFF'S EXHIBIT 1.

\$2,000.00.

WASHINGTON, D. C., *September 14th, 1901.*

Three years after date, for value received, I promise to pay to Marion E. J. Martin or order, the sum of Two Thousand Dollars at Martin Bros. Real Estate Office—with interest at the rate of 6 per centum per annum until paid; said interest payable semi-annually.

JAMES A. WINEBERGER,

Address, 713 23d Street N. W.

Secured by deed of trust on North ½ Lot 13—Lot 4 in Square 56.

LEE R. MARTIN,

THOMAS R. MARTIN,

Trustees.

(Endorsed.)

Int. paid Mar. 14, 1902.

“ “ Sept. 14, 1902.

Int. paid Mar. 14, 1903.

“ “ Sept. 14, 1903—60.00.

“ “ Mar. 14, 1904—60.00.

“ “ Sept. 14, 1904—60.00.

“ “ Mar. 14, 1905—60.00.

“ “ Sept. 14, 1905—60.00.

“ “ Mar. 14, 1906—60.00.

In pencil “ “ Sept. 14, 1906—60.00.

This indenture, made this Fourteenth day of September, in the year of our Lord one thousand nine hundred and One, by and between James A. Wineberger unmarried of the City of Washington, District of Columbia of the first part and Lee R. Martin and Thomas R. Martin Trustees—Lee R. Martin of the same place and Thomas R. Martin of the town of Kensington, Montgomery County, Maryland, parties of the second part.

Whereas, the said James A. Wineberger is justly indebted unto Marion E. J. Martin in the full sum of Two Thousand Dollars, being for money loaned, for which said sum he has executed and delivered to and made payable to the order of the said Marion E. J. Martin, his certain principal promissory note of even date herewith payable three years after date with interest at (6%) six per centum per annum, until paid payable semi-annually.

And whereas, the parties of the first part desire to secure the prompt payment of said debt, and the interest thereon, when and as the same shall become due and payable, together with all costs and expenses that may accrue thereon;

Now, therefore, this indenture witnesseth, that the party of the first part, in consideration of the premises, and of one dollar, lawful money of the United States of America, to him or them in hand paid by the parties of the second part, the receipt of which, before the sealing and delivery of these presents, is hereby acknowledged, have given, granted, bargained and sold, aliened, enfeoffed, 77 released and conveyed, and does by these presents give, grant, bargain and sell, alien, enfeoff, release and convey unto the parties of the second part, their heirs and assigns the survivor of them his heirs and assigns, the following described land and premises, situate in the City of Washington in the District of Columbia, and designated as Lot (13) in James A. Wineberger's subdivision (of the North $\frac{1}{2}$) half of original lot 4 in Square (56) fifty-six as per plat recorded in the office of the surveyor of the Land Records of the District of Columbia recorded in Liber R. L. H., folio 238 together with all and singular the improvements, ways, easements, rights, privileges and appurtenances to the same belonging, or in anywise appertaining, and all the estate, rights, title, interest and claim, either at law or in equity, or otherwise however, of the party of the first part, of, in, to or out of the said land and premises.

To have and to hold the said land, premises and appurtenances, unto and to the only use of the parties of the second part their heirs and assigns the survivor of them his heirs and assigns.

In and upon the trusts, nevertheless, hereinafter declared; that is, in trust to permit said James A. Wineberger his heirs or assigns, to use and occupy the said described land and premises, and the rents, issues and profits thereof to take, have and apply to and for his and their sole use and benefit, until default be made in the payment of said promissory note hereby secured, or any instalment of interest thereon, when and as the same shall become due and

payable, or any proper cost, charge, commission or expense
78 in and about the same.

And upon the full payment of all the said note and the interest thereon, and all other proper costs, charges, commissions, half commissions and expenses, at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said James A. Wineberger his heirs and assigns, at his or their cost.

And upon this further trust, upon any default or failure being made in the payment of said note or of any instalment of principal or interest thereon, when and as the same shall become due and payable, or any proper cost, charge, commission or expense in and about the same, then and at any time thereafter, to sell the said described land and premises, at public auction, upon such terms and conditions, at such time and place, and after such previous public advertisement as the parties of the second part, the survivor of them his heirs, or the trustee acting in the execution of this trust, shall deem advantageous and proper; and to convey the same in fee simple to, and at the cost of, the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase money; and of the proceeds of said sale or sales; First, to pay all proper costs, charges and expenses, including all taxes, general and special, due upon said land and premises, at time of sale, and to retain as compensation a commission of five per centum on the amount of the said sale or sales; Second, to pay whatever may then remain unpaid of the said note and the interest thereon, whether
79 the same shall be due or not; and Last, to pay the remainder of said proceeds, if any there be, to said James A. Wineberger his heirs or assigns.

And the said James A. Wineberger does hereby agree at his own cost, during all the time wherein any part of the matter hereby secured shall be unpaid or unsettled, to keep the said improvements insured against loss by fire, in the name and to the satisfaction of the parties of the second part, who shall apply whatever may be received therefrom to the payment of the matter hereby secured, whether due or not; and also to pay all taxes and assessments, both general and special, that may become due on, or be assessed against said land and premises during the continuance of this Trust, and that upon any default or neglect to so insure, or pay taxes and assessments, any party secured hereby may have said improvements insured and pay said taxes and assessments, and the expense thereof shall be a charge hereby secured and bear interest at the same rate as the said indebtedness hereby secured.

And it is further agreed that if the property shall be advertised for sale under the provisions of this Deed and not sold, then the said trustees shall be entitled to one half the commission above provided, to be computed on the amount of the debt hereby secured.

In witness whereof, the party of the first part has hereunto set his hand and seal on the day and year first hereinbefore written.

JAMES A. WIN-BERGER. [SEAL.]

Signed, sealed and delivered in presence of—
JESSE W. RAWLINGS.

80 UNITED STATES OF AMERICA,
District of Columbia, To wit:

I, Jesse W. Rawlings, a Notary Public in and for the said District do hereby certify that James A. Wineberger, unmarried, who is personally well known to me as the grantor in and the person who executed the foregoing and annexed Deed bearing date on the Fourteenth day of September A. D. 1901, personally appeared before me in said District, and acknowledged the said Deed to be his act and deed.

Given under my hand and official seal, this Twenty day of October A. D. 1901.

[SEAL.]

JESSE W. RAWLINGS,
Notary Public, D. C.

(Endorsed.)

Received for record on the 28- day of October A. D. 1901, at 12:50 o'clock P. M., and recorded in Liber No. 2612 at folio 107 et seq. one of the Land Records for the District of Columbia, and examined by

H. P. CHEATHAM, *Recorder.*

81 DEFENDANT'S EXHIBIT #1.

\$3500.00. WASHINGTON, D. C., *June 25th, 1904.*

Three years after date, for value received, I promise to pay to Thomas R. Martin or order, the sum of Thirty Five Hundred Dollars at — with interest at the rate of six per centum per annum until paid; said interest payable semi-annually.

JAMES A. WINEBERGER,
Address —.

No. —.

Due —.

N. B.—Retain this note after payment and produce it when a release is obtained.

Secured by Deed of Trust

13 56

On Lot A & B in Square 58.

LEE R. MARTIN,
 MARK F. FINLEY,
Trustees.

(Endorsed.)

June 25, '05. Paid on note \$1,000.

" " " Interest paid.

1906.

Jan'y 5. By 6 mos. int. to Dec. 25/05.

THOS. R. MARTIN.

The time of payment of this note is extended to — — — with interest payable semi-annually at — per cent. per annum.

Said note and the Deed of Trust securing the same are to remain otherwise unqualified and in full force.

(In pencil:) Insurance expires Feb'y 13th, 1906.

Sept. 18/06 Paid L. H. P. 150.00.

DEFENDANT'S EXHIBIT No. 2.

Report of Title.

Law Office of J. Thomas Sothoron,
Columbian Building, Washington, D. C.

WASHINGTON, D. C., *July 1, 1904.*

Messrs. Martin Bros., Washington, D. C.:

I have made an examination of the Land Records of the District of Columbia, and the Records of the Supreme Court of the said District, as requested by you, relative to the status of the hereinafter described property, and

As a result of said examination, I find as follows:

Description:

Lot numbered Thirteen (13) in James A. Wineberger's subdivision of the North One Half of original lot Four (4) in Square Fifty-six (56) as per plat recorded in the Office of the Surveyor of the District of Columbia, in Liber R. L. H. folio 238. And also the additional described land and premises known and distinguished as Lots lettered "A" and "B" in F. A. Tschiffely's subdivision of lots in Square Eighty-eight (88) as per plat in Liber W. F. folio 168 of the Records of the Surveyor's Office of the District of Columbia.

That the above described property is free of all encumbrances and good in fee simple in James A. Wineberger except the item noted below.

Deed of Trust Dated June 25th, 1904. Recorded June 25th, 1904.

Liber 2826 at folio 150 et seq. To secure Thomas R. Martin \$3500.

James A. Wineberger to Lee R. Martin, Mark F. Finley:

One (1) note of even date payable three years after date with interest at the rate of 6% per annum until paid.

83 Judgments, Decrees, and Mechanics' Liens as follows:
None.

My examination does not include taxes, etc., as the Collector of Taxes will certify as to them upon request.

J. THOMAS SOTHORON.

Remarks.

(Slip Attached to Exhibit.)

Tax Certificate already forwarded to Mr. Poole.

84

DEFENDANT'S EXHIBIT No. 3.

This Deed, made this Twenty-fifth day of June A. D. 1904 by and between James A. Wineberger, unmarried, of the City of Washington, District of Columbia party of the first part, and Lee R. Martin and Mark F. Finley, both of the same place, Trustees, parties of the second part:

Whereas, the said James A. Wineberger is justly indebted unto Thomas R. Martin in the full sum of Thirty five Hundred Dollars, for which he has executed and delivered to the said Thomas R. Martin his one certain promissory note of even date herewith and made payable to the order of the said Thomas R. Martin. Said note being given for the sum of Thirty-five Hundred Dollars (\$3500.00) due and payable in Three (3) years from date with interest at the rate of six per cent (6%) per annum until paid, interest payable semi-annually.

And whereas the party of the first part desires to secure the prompt payment of said debt, and interest thereon, when and as the same shall become due and payable, and all costs and expenses incurred in respect thereto, including reasonable counsel fees incurred or paid by the said parties of the second part or substituted trustee, or by any person hereby secured, on account of any litigation at law or in equity which may arise in respect to this trust or the property hereinafter mentioned, and of all money which may be advanced
85 as provided herein, with interest on all such costs and advances from the date thereof.

Now, therefore, this indenture witnesseth, that the party of the first part, in consideration of the premises, and of one dollar, lawful money of the United States of America, to him in hand paid by the parties of the second part, the receipt of which, before the sealing and delivery of these presents, is hereby acknowledged, has granted, and does hereby grant unto the parties of the second part, the following described land and premises, situate in the City of Washington, District of Columbia, known and distinguished as Lot numbered Thirteen (13) in James A. Wineberger's Sub-division of the North One Half of original lot Four (4) in Square Fifty-six (56) as per plat recorded in the office of the Surveyor of the District of Columbia, recorded in Liber R. L. H. Folio 238. And also the additional described land and premises situate in the City of Washington, District of Columbia, known and distinguished as Lots lettered "A" and "B" in F. A. Tschiffely's Subdivision of Lots in Square Eighty-eight (88) as per plat in Liber W. F., folio 168 of the Records of the Surveyor's Office of the District of Columbia, together with all the improvements in anywise appertaining, and all the estate, right, title, interest, and claim, either at law or in equity, or otherwise however, of the party of the first part, of, in, to, or out of the said land and premises.

In and upon the Trusts, nevertheless, hereinafter declared: that is to say: In trust to permit said party of the first part, his heirs or

86 assigns, to use and occupy the said described land and premises, and the rents, issues, and profits thereof, to take, have, and apply to and for his or their sole use and benefit, until default be made in the payment of said promissory note hereby secured, or any instalment of interest thereon, when and as the same shall become due and payable, or any proper cost or expense in and about the same as hereinafter provided.

And upon the full payment of all of said note and the interest thereon, and all moneys advanced or expended as herein provided, and all other proper costs, charges, commissions, half commissions, and expenses at any time before the sale hereinafter provided for, to release and reconvey the said described premises unto the said party of the first part his heirs or assigns at his or their cost.

And upon this further trust, upon any default or failure being made in the payment of said note or of any instalment of principal or interest thereon, when and as the same shall become due and payable, or upon default being made in the payment, after demand therefor, of any money advanced as herein provided for, or of any proper cost, charge, commission, or expense in and about the same, then and at any time thereafter, the said parties of the second part their heirs or the trustee acting in the execution of this trust shall have the power and it shall be their or his duty thereafter to sell, and in case of any default of any purchaser to resell the said described land and premises at public auction, upon such terms and

87 conditions, in such parcels, at such time and place, and after such previous public advertisement as the parties of the second part their heirs or the trustee acting in the execution of this trust, shall deem advantageous and proper; and to convey the same in fee simple, upon compliance with the terms of sale, to, and at the cost of, the purchaser or purchasers thereof, who shall not be required to see to the application of the purchase money; and of the proceeds of said sale or sales; Firstly, to pay all proper costs, charges and expenses, including all fees and costs herein provided for, and all moneys advanced for taxes, insurance, and assessments, with interest thereon as provided herein and all taxes, general and special, due upon said land and premises at time of sale, and to retain as compensation a commission of 5 per centum on the amount of the said sale or sales; Secondly, to pay whatever may then remain unpaid of said note, whether the same shall be due or not, and the interest thereon to date of payment, it being agreed that said note shall, upon such sale being made before the maturity of said note be and become immediately due and payable at the election of the holder thereof; and, Lastly, to pay the remainder of said proceeds, if any there be, to said party of the first part, his heirs or assigns, upon the delivery and surrender to the purchaser, his, her, or their heirs or assigns, of possession of the premises so as aforesaid sold and conveyed, less the expenses, if any, of obtaining possession.

And the said party of the first part does hereby agree at his own cost, during all the time wherein any part of the matter hereby secured shall be unsettled or unpaid, to keep the said improvements insured against loss by fire in the full sum of Sixteen
88 Hundred dollars, in the name and to the satisfaction of the

parties of the second part, or substituted trustee, in such fire insurance company or companies as the said parties of the second part may select, who shall apply whatever may be received therefrom to the payment of the matter hereby secured, whether due or not, unless the party entitled to receive shall waive the right to have the same so applied; and also to pay all taxes and assessments, both general and special, that may be assessed against, or become due on, said land and premises during the continuance of this trust, and that upon any neglect or default to so insure, or to pay taxes and assessments, any party hereby secured may have said improvements insured and pay said taxes and assessments, and the expense thereof shall be a charge hereby secured and bear interest at the rate of six per centum per annum from the time of such payment.

And it is further agreed that if the said property shall be advertised for sale as herein provided and not sold, the trustees or trustee acting shall be entitled to one-half the commission above provided, to be computed on the amount of the debt hereby secured.

And the said party of the first part covenants that he will warrant specially the land and premises hereby conveyed, and that he will execute such further assurances of said land as may be requisite or necessary.

In witness whereof, the party of the first part has hereunto set his hand and seal on the day and year first hereinbefore
89 written.

JAMES A. WINEBERGER. [SEAL.]

Signed, sealed, and delivered in the presence of
J. THOMAS SOTHORON.

UNITED STATES OF AMERICA,
District of Columbia, To wit:

I, J. Thomas Sothoron a Notary Public in and for the District of Columbia, do hereby certify that James A. Wineberger, unmarried, of the City of Washington, District of Columbia, party to a certain Deed bearing date on the — day of — 190—, and hereto annexed, personally appeared before me in said District, the said James A. Wineberger being personally well known to me as the person who executed the said Deed, and acknowledged the same to be his act and deed.

Given under my hand and seal this 25th day of June A. D. 1904.

[SEAL.]

J. THOMAS SOTHORON,
Notary Public, D. C.

(Endorsed.)

Received for record on the 25 day of June A. D. 1904 at 12:00 o'clock M., and recorded in Liber No. 2826 at folio 150 et seq., one of the Land Records for the District of Columbia, and examined by

R. W. DUTTON,
Deputy Recorder.

DEFENDANTS' EXHIBIT No. 4.

2310.

Office of the Assessor, District of Columbia.

Certificate of Taxes.

#83182.

WASHINGTON, D. C., Jul- 25, 1905.

Mr. Martin Bros., 1925 Pa. Ave., N. W.

On the following real estate, to-wit: Sub lot 13, Square 56, 28.94 feet on 23rd street, No other front— 3970 square feet, valued at \$1985, value imp'ts. \$700, assessed in 1905 in the name of James A. Wineberger, there now appears by the books and records of taxes and assessments to be due and unpaid as follows, with penalty and interest thereon, as provided by law:

General Taxes.

For the year ending June 30 1905, \$40.28.

H. E. W.

G.

Special Assessments.

No unpaid special assessments to date.

Alley assessments, —

Corporation assessments, —

Costs, —

Water Main Taxes.

H.

S.

C.

July 25, 1905.

No unpaid Watermain Taxes.

91 Water rent excepted.

This certificate does not include any special assessment that may be pending and not at this date due and payable.

Witness my hand and seal of office the 26" day of July, 1905.

Fee, 50 Cents, Paid.

H. H. DARNEILLE,

Assessor District of Columbia.

By F. H. ALVEY,

Assistant Assessor.

[SEAL.]

(Slip Attached to Exhibit.)

Tax Certificate to July 25th, 1905 on Wineberger Property on 23d Street.

92

DEFENDANTS' EXHIBIT No. 5.

This Instrument or Policy of Insurance Witnesseth,
that

The Firemen's Insurance Company of Baltimore
Incorporated 1825.

No. 507718.

\$2500.00

In consideration of the Stipulation herein named and of Ten
00/100 Dollars Premium.

Does Insure James A. Wineberger for the term of three years
from the 13th day of February 1903, at noon, to the 13th day of
February 1906, at noon, against all direct loss or damage by fire,
except as hereinafter provided, to an amount not exceeding Twenty
five hundred Dollars, to the following described property while lo-
cated and contained as described herein, and not elsewhere, to wit:

Other Insurance permitted. Other Insurance permitted.

\$2,500. On the 2-two story brick buildings with tin roof, in-
cluding additions thereto attached, occupied by Tenants as a dwell-
ings, situate No. 713-713½ on the East side of 23rd street, in N. W.
Section City of Washington, D. C. Being (\$1,250) twelve hundred
& fifty dollars on each.

Lightning Clause.—This policy shall cover any direct loss or dam-
age caused by Lightning (meaning thereby the commonly accepted
use of the term Lightning, and in no case to include loss or
93 damage by cyclone, tornado or wind storm), not exceeding
the sum insured, nor the interest of the insured in the prop-
erty, and subject in all other respects to the terms and conditions of
this Policy. Provided, however, if there shall be any other insurance
on said property this Company shall be liable only pro rata with such
other insurance for any direct loss by Lightning, whether such other
insurance be against direct loss by Lightning or not.

Attached to and forming part of Policy No. 507718 The Firemen's
Insurance Company.

MARTIN BROS., *Agent.*

Loss if any payable to Thomas R. Martin, Lee R. Martin, Trustees,
as interest may appear.

Loss if any payable to Lee R. Martin, Mark F. Finley, Trustees,
as interest may appear.

* * * * *

In witness whereof, this company has executed and attested these
presents this 13th day of February, 1903.

But this policy shall not be valid until countersigned by the duly
authorized agent of the company at Washington, D. C.

F. E. S. WOLFE,
President.

HARRY L. RIALI,
Secretary.

Countersigned by
MARTIN BROS., *Agents.*

94

DEFENDANTS' EXHIBIT No. 6.

Martin Brothers,
Real Estate and Insurance,
Washington, D. C.

JULY 20, 1905.

Richard Poole, Esq., Poolesville, Md.

MY DEAR MR. POOLE: I have two loans at this time, papers all complete. One of them for \$2500 running at 6%. They are first class securities on improved property and I bring them to your attention and will you kindly advise me this week if you are in the market for a loan.

I am, with kind regards,
Very truly yours,

THOMAS R. MARTIN.

Dict. TRM/C.

95

DEFENDANTS' EXHIBIT No. 7.

Martin Brothers,
Real Estate and Insurance.
Washington, D. C.

JULY 22, 1905.

Richard Poole, Esq., Poolesville, Md.

MY DEAR MR. POOLE: I am in receipt of your kind favor of recent date and beg to advise you that I shall furnish you with complete data on the loans I offer you.

They are good rental properties and interest in each case will be paid promptly as it falls due.

I am, with esteem,
Very truly yours,

THOMAS R. MARTIN. .

Dict. TRM/C.

96

DEFENDANTS' EXHIBIT No. 8.

Martin Brothers,
Real Estate and Insurance.
Washington, D. C.

JULY 27, 1905.

Richard Poole, Esq., Poolesville, Md.

MY DEAR MR. POOLE: I had to go out of the city yesterday in connection with the sale of the Waters property near Washington Grove and upon my return to the city this morning I find that my stenographer held up the 23d St. papers in order to send through the insurance policies with them to make them complete.

I shall send these out to-night by registered mail thus you will have the papers complete in both cases. In order that you might

have tax certificates right down to date, I had the Tax Office prepare new ones. These came through this morning and you will observe they bear date July 25th.

I might add that there has been some negotiation on the 18th St. property and in the event of the sale of this property they might want to pay off the entire loan. This being the case I would ask you should it occur, to allow me the privilege of taking this loan up, by paying three months additional interest. This would seem
97 to be a very fair adjustment should the sale of the property be consummated.

I remain, with kind regards,
Very truly yours,

THOMAS R. MARTIN.

Dict. TRM/C.

98

DEFENDANTS' EXHIBIT No. 9.

Martin Brothers,
Real Estate and Insurance.

WASHINGTON, D. C., *July* 31, 1905.

Richard Poole, Esq., Poolesville, Md.

MY DEAR MR. POOLE: I make enclosure to you of the papers and note in the Wineberger case. I have already forwarded to you the tax certificate which is brought down to date. The tax certificate in each of these cases should go with the papers so as to keep them intact.

I am, with sincere regard,
Very truly yours,

THOMAS R. MARTIN.

Dict. TRM/C.

99

Report of Fred McKee.

Filed May 20, 1910.

* * * * *

Fred McKee reports to the Court that in pursuance of an agreement between the parties in interest who are parties to this cause, he has collected the rents from the property described in the bill of complaint and paid therefrom the taxes on said property and the costs of repairs and other expenses incident thereto. That he collected the sum of \$618.06 and expended for said taxes, etc., \$451.84 and has a balance on hand of \$166.22 against which he claims a commission of five per cent, having net \$135.32. In accordance with said agreement of the parties in interest he holds said sum subject to the order of this Court.

FRED McKEE.

Subscribed and sworn to before me this 20th day of May, A. D. 1910.

J. R. YOUNG, *Clk*,
F. E. CUNNINGHAM,
Ass't Clk.

The foregoing report is acceptable to plaintiff:

J. S. EASBY-SMITH,
Att'y for Pl'tf.

100

Decree.

Filed May 20, 1910.

* * * * *

This cause coming on to be heard on the pleadings and agreed statement of facts, it is on this 20th day of May, 1910, Adjudged, Ordered and Decreed that the promissory note held by the defendant Florence Poole, described in the bill of complaint and her answer in this cause, to the extent of Twenty-five Hundred Dollars with interest thereon from December 25, 1896, is a first lien on the proceeds of the property sold by decree in this cause and that Henry W. Sohon and Fred McKee, trustees in this cause, shall indorse and apply the two promissory notes for \$499.26 each, received from Nellie M. L. Jenkins for deferred purchase money and sufficient of the money in their hands to pay the said note with interest to date of payment, and the said Fred McKee shall apply the fund of \$135.32 in his hands per his report to pay any balance remaining unpaid on said note after said application and payment by said trustees.

And it is further ordered and decreed that the promissory note held by the plaintiff Marion E. J. Martin, described in the bill of complaint, be and it hereby is reinstated as a lien on the proceeds of said real estate, subject to the lien of the said note held by the defendant Florence Poole and that said Henry W. Sohon and Fred McKee, trustees shall turn over the balance of the money in their

101 hands as shown by their report filed in this cause, if any is left after the satisfaction of said note held by said Florence Poole, to the said Marion E. J. Martin on account of the costs incurred by her in this cause and on account of the amount due on said note held by her.

And it is further ordered and decreed that said Fred McKee shall pay over to said Marion E. J. Martin the balance of said sum of \$135.32 in his hands as per his said report, if any is left after the satisfaction of said note held by said Florence Poole, on account of the amount due on said note held by her. And said trustees shall report their action hereunder to the Court.

From this decree the plaintiff notes an appeal in open Court and the amount of a supersedeas bond is fixed at Five Hundred (500) Dollars.

THOS. H. ANDERSON, *Justice*.

Memorandum.

June 9, 1910.—Appeal bond approved and filed.

102 *Order Extending Time to File Transcript.*

Filed Jul- 13, 1910.

* * * * * *

Upon consent of the parties it is, by the Court this thirteenth day of July, 1910, ordered:

That the time for filing the transcript on Appeal in the above entitled cause be, and it hereby is extended to and including the first day of September, 1910.

WENDELL P. STAFFORD, *Justice.*

We consent:

J. S. EASBY-SMITH,
Attorney for Plaintiff.

H. W. SOHON,
Attorney for Defendant,
Florence Poole.

103 *Directions to Clerk for Preparation of Transcript of Record.*

Filed Jul- 13, 1910.

* * * * * *

In making up the record on appeal in the above-entitled cause the Clerk will please include:

1. Original bill of complaint filed April 25, 1907, and Exhibit B of said bill, but not Exhibit A which is the same as Plaintiff's Exhibit No. 2 attached to the agreed statement of facts, nor Exhibit F which is the same as Defendant's Exhibit No. 3 attached to the agreed statement of facts, nor Exhibits C, D, E and G, which are deemed immaterial to the issues in this case.

2. Amended bill of complaint filed May 8, 1907.

3. Supplemental bill of complaint filed June 21, 1909.

4. Decree *pro confesso*, December 16, 1908, against Thomas R. Martin, Defendant No. 1.

5. Answer of Lee R. Martin, Defendant No. 2, filed February 26, 1909.

6. Answer of Mark F. Finley, Defendant No. 3, filed July 7, 1909.

7. Answer of John A. Wineberger, Defendant No. 4, filed May 7, 1909.

8. Answer of Charles G. Allen, Defendant No. 5, filed September 17, 1907.

9. Answer of William A. Collis, Defendant No. 6, filed July 7, 1909.

104 10. Answer of F. Walter Brandenburg, Defendant No. 7, filed August 2, 1907.

11. Answer of Andrew H. Regan and William C. Flenner, Defendants Nos. 8 and 9, filed August 28, 1907.

12. Answer of Florence Poole, Defendant No. 10, filed May 13, 1907.
13. Answer of A. Coulter Wells, trustee, filed June 29, 1909.
14. Replication, filed August 23, 1909.
15. Decree of October 20, 1909.
16. Memorandum of bond of trustees.
17. Report of trustees, March 23, 1910.
18. Order of ratification, March 23, 1910.
19. Report of trustees, April 26, 1910.
20. Stipulation and agreed statement of facts filed April 27, 1910, and all exhibits thereto.
21. Report of Fred McKee, filed May 20, 1910.
22. Final decree of May 20, 1910, with notation of appeal and fixing of supersedeas bond.
23. Memorandum of appeal bond.
24. Order extending time to file transcript on appeal.
25. This designation of record.

J. S. EASBY-SMITH,
Attorney for Plaintiff.

H. W. SOHON,
Attorney for Defendant, Florence Poole.

105 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, John R. Young, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 104, both inclusive, to be a true and correct transcript of the record according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 27033 in Equity, wherein Marion E. J. Martin is Complainant and Thomas R. Martin, et als. are Defendants, as the same remains upon the files and of record in said Court.

In testimony whereof, I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 23rd day of August, 1910.

[Seal Supreme Court of the District of Columbia.]

J. R. YOUNG, *Clerk*,
By FRED. C. O'CONNELL,
Ass't Clerk.

Endorsed on cover: District of Columbia Supreme Court. No. 2211. Marion E. J. Martin, appellant, vs. Florence Poole. Court of Appeals, District of Columbia. Filed Aug. 23, 1910. Henry W. Hodges, clerk.

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In the Court of Appeals

OF THE DISTRICT OF COLUMBIA.

OCTOBER TERM, 1910.

No. 2211.

MARIAN E. J. MARTIN, APPELLANT,

vs.

FLORENCE POOLE.

BRIEF OF APPELLANT.

JAMES S. EASBY-SMITH,
RALPH B. FLEHARTY,
Attorneys for Appellant.

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I.

Statement of the Case.

This is an appeal from a final decree of the Supreme Court of the District of Columbia reinstating a promissory note held by the plaintiff (appellant) as a lien on the proceeds of certain real estate sold by decree in the case, but holding that the said note of appellant so reinstated is subject to a similar lien of a note held by the defendant (appellee) (Rec., p. 50).

The original bill in this case, filed April 25, 1907 (Rec., pp. 1-6), and the amended bill filed May 8, 1907 (Rec., pp. 8-15), named as defendants, Thomas R. Martin and Lee R. Martin and eight others, including the defendant (appellee), Florence Poole; and by a supplemental bill filed June 21, 1909, A. Coulter Wells, trustee in bankruptcy of Martin Brothers, was added as a defendant (Rec., pp. 27-28).

By the answers of the defendants (Rec., pp. 15, 17, 18, 22, 24, 25, 28, 29 and 30), and a *pro confesso* against the defendant, Thomas R. Martin, the interests of all the defendants, except Florence Poole and A. Coulter Wells, have been eliminated; and by the stipulation and agreed statement of facts filed April 27, 1910 (Rec., pp. 35-38), the defendant Wells consents that the duplicate notes which were in his possession as trustee in bankruptcy, and have been filed in court, may be cancelled and held for naught. As a consequence, the only parties in interest now remaining in the case are the plaintiff, Mrs. Martin, and the defendant, Mrs. Poole.

The bill was filed by the plaintiff to reinstate a deed of trust on a parcel of real estate in the District of Columbia, securing a note of one Wineberger to her for \$2,000, claimed by her to have been released fraudulently and without her knowledge or consent. The defendant, Mrs. Poole, held a note of said Wineberger for \$3,500 (upon which appears an endorsement for \$1,000 paid on the principal) secured on the same parcel and also upon another parcel of real estate in the District of Columbia.

During the progress of the cause a decree was passed (Rec., pp. 31-32) ordering the two parcels of real estate to be sold by trustees appointed for the purpose, and providing the net proceeds of the sale—

“shall be held by said trustees in lieu of the property sold and be subject to the further order or final decree in this cause determining the rights of the parties to this cause which are to be preserved against said fund instead of said real estate.”

The trustees sold one parcel, hereafter designated as tract No. 1, for \$1,498.88, and the other parcel, hereafter known as tract No. 2, for \$2,000, the net proceeds of the

two sales being \$3,063.40 (reports of trustees, Rec., pp. 32, 33, and 34, 35).

The sales were ratified (Rec., p. 34).

The note for \$2,000 of the plaintiff was secured on tract No. 2; the note for \$2,500 of the defendant Poole was secured on both tract No. 1 and tract No. 2.

The remedy sought by the plaintiff, if decreed, would affect the defendant Poole to the extent of nearly \$2,000; as the plaintiff, if she prevailed, would receive the net proceeds of the sale of tract No. 2, and the defendant the net proceeds of the sale of tract No. 1, whereas, if the plaintiff failed to prevail the defendant would receive, for her note and accrued interest, the net amount of the proceeds of the sales of both tracts and the plaintiff would receive little or nothing.

On April 27, 1910, the parties entered into and filed a stipulation and agreed statement of facts (Rec., pp. 35-38); and the cause was heard in the court below upon the pleadings and this agreed statement of facts.

By its decree of May 20, 1910 (Rec., p. 50), the court below held that the note held by the defendant Poole, to the extent of \$2,500 and interest from December 25, 1906, is a first lien upon the proceeds of the sale of both tracts; and that the note for \$2,000 held by the plaintiff is reinstated as a lien on the proceeds of said sale, subject to the lien of the defendant Poole.

From this decree the plaintiff appeals.

II.

Assignment of Errors.

1. The court below erred in holding that the promissory note held by the defendant, Florence Poole (appellee), is a first lien on the proceeds of the two pieces of real estate sold under decree in the cause.

2. The court below erred, after reinstating the promissory note held by the plaintiff, Marian E. J. Martin (appellant), in holding it to be subject to the lien of the note held by the defendant, Florence Poole (appellee), on the proceeds of both parcels of real estate sold under decree in the cause.

3. The court erred in not holding that the promissory note held by the appellant, after being reinstated, should be a first lien on the proceeds of the sale of that parcel of the real estate, sold under decree in the cause, upon which said note of appellant was secured.

III.

POINTS AND ARGUMENT.

The Facts.

Under the agreed statement of facts and the exhibits thereto (Rec., pp. 35-49), the amended bill (Rec., pp. 8-15) and the answer of the defendant Poole (Rec., pp. 15-17), the admitted facts are as follows:

James A. Wineberger, now deceased, was the owner of lots A and B in a certain subdivision in square 88 in Washington, D. C., hereafter referred to as tract No. 1; and was also the owner of lot 13 in Wineberger's subdivision of lot 4 in square 56, hereafter referred to as tract No. 2.

On September 14, 1901, Wineberger (acting through Thomas R. Martin and Lee R. Martin, co-partners, trading as Martin Brothers, as his agents in procuring loans of money upon his real estate and preparing deeds of trust upon and managing his real estate) (see amended bill, par. 11, Rec., p. 11, and agreed statement of facts, bottom p. 36) procured from the plaintiff a loan of \$2,000 for which he executed and delivered his note to her order for that amount, payable three years after

date, and secured by a deed of trust executed by Wineberger and conveying to Lee R. Martin and Thomas R. Martin as trustees tract No. 2; the original note and deed of trust being the plaintiff's Exhibits No. 1 and No. 2 filed with the agreed statement of facts (Rec., p. 38 and pp. 39-41). The original note has always been in the possession of the plaintiff from the time it was made, the interest upon the said note having been paid to plaintiff up to and including September 14, 1906, and the endorsements of payments of interest upon the note being in her handwriting. No principal has ever been paid upon this note.

The note is dated September 14, 1901, and upon its face is payable at the office of Martin Brothers. The deed of trust, executed September 14, 1901, and recorded October 28, 1901, describes the note as follows:

"Whereas James A. Wineberger is justly indebted to Marian E. J. Martin in the full sum of two thousand dollars, being for money loaned, for which said sum he has executed and delivered to and made payable to the order of the said Marian E. J. Martin his certain promissory note of even date herewith, payable 3 years after date, with interest at (6%) six per cent. per annum until paid, payable semi-annually" (Rec., p. 39).

Neither the note nor the deed of trust contains any provision granting the privilege of paying the principal or any part thereof before maturity. It provides for release to Wineberger only upon full payment of all the said note and the interest thereon, etc. (Rec., top p. 40).

Subsequently, on June 15, 1904, three months before the plaintiff's note matured, the trustees, Lee R. Martin and Thomas R. Martin, fraudulently and in violation of plaintiff's rights, released the deed of trust securing the plaintiff's note, falsely reciting in the deed of release

that the debt secured had been paid and the note cancelled. The plaintiff did not join in this release—had no knowledge of it—and it was made without her consent and without her knowledge or authority in fact, knowledge that said release had been made having come to her only a few days before the filing of her bill (amended bill, pars. 6 and 7, Rec., pp. 9-10; statement of fact, Rec., p. 36; release, Rec., p. 7).

After the last payment of interest to the plaintiff, on September 14, 1906, and shortly after the next payment of interest became due, on March 14, 1907, namely, on April 5, 1907, a receiver was appointed by this court for the firm of Martin Brothers. The plaintiff filed her bill on April 25, 1907. On June 12, 1907, a trustee in bankruptcy of said Martin Brothers was appointed and qualified in this court.

In the interim, between September 14, 1901, and the filing of plaintiff's bill, the following events occurred.

On April 8, 1902, Wineberger made his note for \$700 to the order of Thomas R. Martin, payable three years after date, secured on tract No. 1. The deed of trust securing this note has not been released, but it is admitted for the purposes of this suit that the note has been paid and it is filed with the clerk of this court; and the trustee in bankruptcy has consented that it may be cancelled and held for naught.

On February 21, 1903, Wineberger executed his note for \$500, payable to the order of Mary S. Hogan, secured by deed of trust on both tract No. 1 and tract No. 2. The deed of trust securing this note was properly released by the trustees on July 1, 1904, and the note itself is filed with the clerk of this court, and the trustee in bankruptcy has consented that it be cancelled and held for naught.

On June 25, 1904, ten days after the fraudulent release of the deed of trust securing the plaintiff's note, Wine-

berger executed a note for \$3,500 to the order of Thomas R. Martin (who is the same Thomas R. Martin named as one of the trustees in the deed of trust securing the plaintiff's note and one of the members of the firm of Martin Brothers), payable three years after date, and at the same time executed a deed of trust conveying both tract No. 1 and tract No. 2 to Lee R. Martin and Mark F. Finley, as trustees, to secure the payment of said note for \$3,500. Either a copy of this \$3,500 note or a duplicate original of the same is on file with the clerk of this court, and the trustee in bankruptcy has consented that it may be cancelled and held for naught (amended bill, par. 10; Rec., p. 11; statement of facts, Rec., pp. 36 and 38).

At the time of the execution of said note for \$3,500 Wineberger was indebted to Martin Brothers in the sum of about \$300, and was also indebted for the plaintiff's note of \$2,000, and for the above mentioned notes for \$700 and \$500, respectively (Rec., pp. 12 and 36).

The original note for \$3,500 executed by Wineberger and secured by deed of trust on both tracts of ground, and bearing the genuine endorsement of Thomas R. Martin, is in the possession of the defendant, Florence Poole, and is filed with the statement of facts as "Defendant's Exhibit No. 1" (Rec., p. 41). When this note for \$3,500 was a year old and had two years to run, it was purchased from Thomas R. Martin through Martin Brothers by Richard Poole, the late husband of the defendant, Florence Poole, under the following circumstances, that is to say:

In the month of July, 1905, Richard Poole applied to Martin Brothers for an investment for \$2,500 of his money (Rec., p. 37, top), and Martin Brothers offered to him as an investment the said note for \$3,500 bearing endorsements on the back that \$1,000 had been paid upon the principal besides interest. Neither the note

nor the deed of trust securing it contains any provision granting the privilege of paying the principal or any part thereof before maturity (Rec., pp. 43-45). On or about July 25, 1905, Richard Poole paid Martin Brothers \$2,475 for said note and received the same, together with a certificate of title signed by J. Thomas Sothoron, which is filed herewith and marked "Defendant's Exhibit No. 2" (Rec., pp. 37 and 42). The endorsement of six months' interest paid January 5, 1906, now appearing on the back of the \$3,500 note is in the handwriting of Richard Poole; and the endorsement of interest paid September 18, 1906, is in the handwriting of Leonard H. Poole, administrator of Richard Poole. At the same time Richard Poole received a tax certificate, a policy of insurance and the original deed of trust securing the note, which papers are filed herewith marked, respectively, "Defendant's Exhibit No. 3," "Defendant's Exhibit No. 4," and "Defendant's Exhibit No. 5" (Rec., p. 37 and pp. 45-47). In the course of the negotiations for the purchase of the note, Richard Poole received four letters from Martin Brothers (Rec., p. 37), which are attached hereto marked "Defendant's Exhibit No. 6," "Defendant's Exhibit No. 7," "Defendant's Exhibit No. 8," and "Defendant's Exhibit No. 9" (Rec., pp. 48-49). The defendant, Florence Poole, received the note as part of her distributive share of the estate of Richard Poole who died on or about January 12, 1906 (Rec., p. 37).

The certificate of title (Defendant's Exhibit No. 2) is dated at Washington July 1, 1904, addressed to Martin Brothers and signed by J. Thomas Sothoron, certifying that the two properties, tract No. 1 and tract No. 2, are good in fee simple in Wineberger, except for the deed of trust of June 25, 1904, securing the note for \$3,500 (Rec., p. 42).

The certificate of taxes (Defendant's Exhibit No. 4)

is dated July 25, 1905, and also is addressed to Martin Brothers, showing no taxes against tract No 2, except general taxes for the year ending June 30, 1905 (Rec., p. 46).

The policy of insurance (Defendant's Exhibit No. 5) is for insurance on the improvements on tract No. 2 covering the period from February 13, 1903, to February 13, 1906, the following being stamped on the face of the policy, "Loss, if any, payable to Thomas R. Martin, Lee R. Martin, trustees, as interest may appear;" over which a slip is partially pasted upon which is stamped, "Loss, if any, payable to Lee R. Martin, Mark F. Finley, trustees, as interest may appear" (Rec., p. 47).

The four letters (Defendant's Exhibits 6, 7, 8, and 9, dated, respectively, July 20, 22, 27, and 31, 1905) offer to Richard Poole a \$2,500 investment, and transmit to him the said note for \$3,500 and the several papers and certificates hereinbefore referred to.

The plaintiff never had any knowledge of the existence of the \$3,500 note or the deed of trust securing it until a few days before the filing of her bill. Neither Richard Poole nor Florence Poole had any actual knowledge that the plaintiff's note for \$2,000 had not been paid and was still in her possession; nor that the release of the trust securing her note was made without her knowledge and in fraud of her rights; nor that there were any equities which might be asserted against the note for \$3,500. No interest was ever paid upon the \$3,500 held by the defendant, Florence Poole, except the interest endorsed on the back, namely, interest (no amount or period stated) paid June 25, 1905; six months' interest to December 25, 1905, paid to Richard Poole on January 5, 1906; and \$150 paid to Leonard H. Poole, administrator, September 18, 1906, being apparently one year's interest at 6 per cent on \$2,500 from December 25, 1905, to December 25, 1906 (Rec., p. 37).

None of the principal of the \$3,500 note has been paid to any person except as appears by endorsement of \$1,000 on the note (Rec., p. 37).

James A. Wineberger died on February 31, 1906, and his estate is insolvent so that neither the plaintiff nor the defendant, Florence Poole, has any recourse, except against the said fund which is the proceeds of the sales of the two tracts of ground (Rec., top p. 38).

Martin Brothers as individuals and as a firm have been adjudged bankrupts (Rec., p. 27 and p. 38).

The plaintiff's note being secured only on tract No. 2 and the defendant's note being secured on both tract No. 1 and tract No. 2, it is agreed between the plaintiff and the defendant, Florence Poole, that the rights of the defendant, Florence Poole, are superior to the rights of the plaintiff as against that portion of the fund which is the proceeds of the sale of tract No. 1 (Rec., p. 38).

ARGUMENT.

It is apparent from the foregoing statement of facts that the plaintiff is entirely innocent in this transaction, and also that the defendant, Florence Poole, and her husband, from whom she took the note, are innocent so far as direct actual knowledge of the plaintiff's preexisting rights are concerned.

It is also apparent that either one or the other must suffer by the wrongful act of Thomas R. Martin and Lee R. Martin, acting as trustees and also as real estate agents.

The familiar principle of equity has recently again been announced by this court in the case of Fifth Congregational Church *vs.* Bright, 28 App. D. C., 229, a case

somewhat similar to, though also distinguishable from, the case at bar:

“Where one of two innocent persons must suffer a loss occasioned by the wrongful act of a third person, the one must suffer it, who by his negligence or inadvertence, has placed it in the power of such third person to perpetrate a wrong, which otherwise would not have been perpetrated.”

The court in this case follows its ruling in the case of *Carusi vs. Savary*, 6 App. D. C., 330, which also involved similar questions.

It is also clear that the plaintiff had and has rights under her deed of trust of which rights the defendant, Florence Poole, is chargeable with notice if she or her predecessors in interest had either implied or constructive knowledge.

This is not a case for the application of the rules relating to negotiable paper. It is apparent, from the facts that Wineberger, the maker of the notes, is insolvent, that the perpetrators of the fraud are bankrupts, and that the only recourse which either party has is against the real estate charged with the equities, or against the fund which now stands in place of the real estate.

It is clear that Richard Poole took the promissory note now held by the defendant, Florence Poole, and his equitable rights, if any, in the real estate by which the note was secured, with both constructive and implied knowledge of the existence of the prior equitable rights of the plaintiff.

He had constructive knowledge by reason of the existence of the public records and the peculiar circumstances surrounding the entire transaction, and particularly surrounding his purchase of the note.

He had implied knowledge by reason of the actual

3 knowledge of Thomas R. Martin, his predecessor in title, and of Martin Brothers who were his agents in the purchase of the note and security therefor.

He had constructive knowledge of the existence of the equitable rights of the plaintiff on account of the following facts, which ought to have put him on notice, namely:

First, the public records showed that the plaintiff's note for \$2,000 was not due until September 14, 1904, and that the deed of trust securing it contained no provision for the payment of the principal or any part thereof before maturity, and the public record also showed that this note was released by Lee R. Martin and Thomas R. Martin, trustees, three months before its maturity.

Secondly, the note which he purchased, secured in part on the same real estate which secured the plaintiff's note, was made payable to Thomas R. Martin who was one of the trustees under the deed of trust securing the plaintiff's note; and of the two trustees under the deed of trust securing the \$3,500 one was Lee R. Martin, who had been one of the trustees under the deed of trust securing the plaintiff's note; the two Martins constituting the firm of Martin Brothers. Neither the \$3,500 note payable to Thomas R. Martin, nor the deed of trust securing it, contained any provision for payment of the principal or any part thereof before maturity; yet this note when offered by Martin Brothers to Richard Poole in response to his inquiry for an investment for \$2,500 was but one year old, had two years still to run and bore an endorsement showing that on June 25, 1905, when one year old, \$1,000 had been paid upon it, and only one payment of interest (no period or amount stated) had been made.

The foregoing facts concerning both notes are clearly

suspicious and sufficient to put Richard Poole upon a strict inquiry as to the nature of all the transactions.

He made no such inquiries, but accepted the note and paid for it \$2,500, less a 1 per cent discount of \$25, upon the representations of Martin Brothers, whom he unquestionably constituted his agents in the transaction. Having made no such inquiries he is chargeable with constructive notice of the existence of the plaintiff's equitable rights. No

It is also clear that he had implied knowledge, not only of the plaintiff's rights, but of the fraud perpetrated by the trustees and by the partners, on account of the knowledge of Martin Brothers, consisting of Thomas R. Martin and Lee R. Martin, who were his agents (said Thomas R. Martin being his predecessor in title).

It is not to be questioned that Martin Brothers had actual knowledge of all these things, because they were the active perpetrators of the fraud.

That they were the agents of Richard Poole in the transaction whereby Poole purchased the note secured by the deed of trust is also clear, and they were particularly the agent of Poole in the matter of examining the title to the real estate involved.

This conclusion is irresistible from the following facts, namely:

In July, 1905, Poole applied to Martin Brothers for an investment for \$2,500 of his money, and subsequently purchased the note and received it from Martin Brothers, together with certain papers and certificates transmitted to him by them (see statement of facts, Rec., p. 37).

These papers included the certificate of title hereinbefore described, which was addressed to Martin Brothers. This certificate being accepted by Poole, he thereby accepted Martin Brothers and their employee or agent who examined the title for them as his agents in this respect. The papers also included a certificate of taxes obtained by and addressed to Martin Brothers and by

them transmitted to and accepted by Poole. These facts and the letters show that Poole entrusted to Martin Brothers the duty of investing his money, examining the title to the property, and securing such papers and certificates as might be proper and necessary to assure him of the validity of the note and deed of trust and the value of the investment.

Authorities.

Several cases directly in point have been decided by this court and by the Supreme Court of the United States.

One case is that of *Eldredge vs. Conn. G. L. Insurance Co.*, 3 McA., 301, affirmed by the Supreme Court of the United States in *Conn. Genl. Life Ins. Co. vs. Eldredge*, 102 U. S., 545, where, by a substitution of the parties, we practically have the case at bar.

Concerning the question of agency the lower court said (3 McA., 301, 313):

"This (Ward's) employment to abstract the title of this property was entirely independent from the duties devolving upon him as trustee, and in that matter he is exclusively to be regarded as the agent of the company (the lender)."

The Supreme Court in affirming the judgment of this court (102 U. S., 545) said (p. 547):

"He (the trustee) was in terms authorized to release and reconvey it only upon the full payment of the notes, and not otherwise. The deed showed the time the notes had to run, and that by their terms they were not then due. Unless paid at the time, or, what would be deemed equivalent, surrendered, the trustee had no authority to execute the release."

Page 547:

"Here there was no authority on the part of the trustee to execute the deed until payment of the

notes was made. The fact of their nonpayment being known to Bigelow, the agent of the Insurance Company, knowledge of it must be imputed to the company, his principal, and both must be charged with knowledge of the law and the consequent inability of the trustee, at the time, to release the property. . . . What we hold is, that where a purchaser, and a mortgagee or trustee by a trust-deed stands in the same position at the time of taking a deed, has information that a prior mortgagee or trustee of a prior deed has released the property from the mortgage or trust, without payment of the notes or their surrender, or express authority from the holder of them, he will take the property subject to any equitable right of the holder of the notes to secure the payment of which the mortgage or trust-deed was executed."

A similar case is that of *Jackson et al. vs. Blackwood et al.*, 4 McA. and M., 188, which was reversed by the Supreme Court of the United States in *Williams vs. Jackson*, 107 U. S., 478.

The latter case may be cited in support of the defendant Poole's priority, but is clearly distinguishable from the case at bar; the Supreme Court having reversed the court below for the reasons that the original mortgagee had joined in the release (which ~~fact~~ *the fact* is not ~~present in the case at bar~~) and that the person through whom Williams made the loan was not his agent.

Page 483:

"Williams is admitted to have had no actual knowledge that the notes secured by the first trust-deed were held by the plaintiff, or that they were unpaid. The knowledge of these facts by Charles T. Davis, through whom Williams made the loan, does not bind him, because upon the evidence Charles T. Davis appears not to have been his agent, but the agent of Sweet and wife. . . .

"It was suggested in argument that as the first deed of trust showed that the notes secured

thereby were negotiable and were not yet payable, and that the land was not intended to be released from this trust until all the notes were paid, Williams was negligent in not making further inquiry into the fact whether they were still unpaid. But of whom should he have made inquiry? The trustees under the first deed *and the original holder of the notes* secured thereby having expressly asserted under their own hands and seals that the notes had been paid, and Sweet and wife having apparently concurred in the assertion by accepting the deed of release and putting it on record, he certainly was not bound to inquire of any of them as to the truth of that fact; and there was no other person to whom he could apply."

This case may also be cited in argument that Martin Brothers were not Poole's agents; but again the case is distinguishable:

Page 480: "Sweet and wife employed Charles T. Davis to make some arrangement by which they could take up those notes and give others running for a longer time; he went to Samuel T. Williams, and offered him the land, unincumbered, as security for a loan of \$5,000, payable in four (4) years and bearing nine (9) per cent. interest; and Williams agreed to make the loan, if satisfied by a conveyancer's abstract of title that the land was free of all incumbrance, but not otherwise."

In the case at bar Poole came to Martin Brothers to find him an investment for \$2,500.

See, also, *Burnstine vs. Ormes et al.*, 2 McA., 219.

The recent case of *Fifth Congregational Church vs. Bright*, 28 App. D. C., 229, above referred to, may be cited by the appellee in support of her contentions, and it may be urged that the *Bright* case distinguishes the case at bar from the case of *Conn. General Life Ins. Company vs. Eldredge*, *supra*. Upon examination, however,

it will be seen that the facts in the case at bar are utterly different from the facts in the Bright case, but almost identical with the facts in the Eldredge case.

In the Bright case the facts were that Bright, the owner of the mortgage note, sent it prior to its maturity to Ashford, one of the trustees, with full authority to receive payment. Seymour, the equitable owner of the mortgaged property, actually paid the full amount of the note and interest to Ashford, who was Bright's agent; and Ashford, after joining with his co-trustee in a release of the deed of trust, converted to his own use the money paid to him and absconded.

The Bright case went off upon the point that Bright, by constituting Ashford his agent, put it within the power of Ashford to perpetrate the fraud, and that as between the two innocent parties Bright must suffer.

In the case at bar, just as in the Eldredge case, Martin Brothers, the persons who perpetrated the fraud, were not the agents of the person who seeks the remedy, but the agents of the person against whom the remedy is sought. That is to say, Martin Brothers, who perpetrated the fraud, were the agents of Poole.

Under the admitted facts of the case at bar there can be no escape from the legal conclusion that Martin Brothers were Poole's agents.

Upon the question of agency the following doctrine is stated in 31 Cyc., 1225:

"On the other hand, if a money lender employs the intermediary to negotiate loans, to examine the title to property offered as security, to see that the property is discharged from prior incumbrances, to prepare the papers and see to the execution thereof, to pay over the money to the borrower, or to perform other services in regard to the loan, these facts, taken collectively or in various lesser combinations, justify an inference that the intermediary is the agent of the lender."

And in *McLean vs. Ficke*, 94 Iowa, 283, it is held that where a lender of money chooses a person to submit application for real estate loans and such person forwards to the lender such application, together with abstract of title upon which the lender determines whether or not he shall make the loan, and where being satisfied with the security and the title as evidenced by such abstract, he forwards to the agent the money applied for and in turn receives the mortgage that the intermediary is the agent of the lender, notwithstanding the borrower nominate such persons as his agent in the application signed.

Jones on Mortgages, 6th Ed., sec. 561, p. 543:

“Where a solicitor induced a client to take a mortgage upon the lands of a third person situate in the county of Middlesex in England, and soon afterwards induced a second client to advance money on a mortgage on the same lands, without informing him of the existence of the first mortgage, and the second mortgage was registered before the first mortgage was registered, it was held that the holder of the second mortgage must be taken to have had, through the solicitor, notice of the first mortgage, and could not, by the prior registration, obtain priority. Lord Chancellor Hatherley said: ‘It has been held over and over again that notice to a solicitor of a transaction, and about a matter as to which it is part of his duty to inform himself, is actual notice to the client. Mankind would not be safe if it were held that, under such circumstances, a man has not notice of that which his agent has actual notice. The purchaser of the estate has, in ordinary cases, no personal knowledge of the title, but employs a solicitor and can never be allowed to say that he knew nothing of some prior incumbrance because he was not told of it by his solicitor.’ ”

On pages 545–546, sec. 564, it is said:

“When the same agent or attorney is employed by both parties in the same transaction his knowl-

edge is then the knowledge of both the vendor and vendee, of both the mortgagor and the mortgagee. In such cases, moreover, the rule that the agent's notice must be in the same transaction is less strictly adhered to. Thus, where a person made two successive mortgages on the same property, and then gave a further mortgage to the first mortgagee, and the same solicitor was employed in all three transactions, it was held that the first mortgagee had implied notice of the second mortgagee's incumbrance, and that the latter was entitled to priority over the further charge of the first mortgagee."

See *Hargreaves vs. Rothwell*, 1 Keen, 154.

Jamison vs. Gjemenson, 10 Wis., 354.

Heyder vs. Bldg. Loan Asso., 42 N. J. Eq., 403-407:

"Cancellation of a mortgage on the record is only *prima facie* evidence of its discharge, and it is left to the owner making the allegation to prove the cancelling to have been done by fraud, accident or mistake. Such proof being made, the mortgage will be established, even against subsequent purchasers or mortgagee's without notice. *Trenton Banking Co. vs. Woodruff*, 1 Gr. Ch., 117; *Harrison vs. N. J. R. R. Co.*, 4 C. E. Gr., 488."

"Between a mortgagee, whose mortgage has been discharged of record, solely through the unauthorized act of another party, and a purchaser who buys the title in the belief, induced by such cancellation, that the mortgage is satisfied and discharged, the equities are balanced, and the rights, in the order of time, must prevail. The lien of the mortgage must remain, despite the apparent discharge."

See *Young vs. Hill*, 31 N. J. Eq., 345.

Harris vs. Cook, 28 N. J. Eq., 345.

The case of *Townsend vs. Little*, 109 U. S., 504, may be cited by defendant, but upon examination it will be

found that the court holds merely that a secret agreement between a man and his polygamous wife is not good as against innocent purchasers without notice.

The following cases will be found to be in point upon the question of constructive notice, and all sustain the contentions of the plaintiff:

- Appleman *vs.* Gara, 22 Colo., 397.
- Parker *vs.* Randolph, 5 So. Dak., 549.
- Backer *vs.* Pyne, 130 Ind., 288.
- Foster *vs.* Jett, 74 Fed., 678.
- Foster *vs.* Paine, 56 Iowa, 622.
- Shoemaker *vs.* Smith, 80 Iowa, 655.
- Payne *vs.* Abercrombie, 10 Heisk (Tenn.), 161.
- See, also, 1 Jones on Mortgages, sec. 538, p. 518, and sec. 545, p. 527.

The following cases will be found in point upon the questions of agency and implied knowledge through an agent:

- McIntire *vs.* Pryor, 173 U. S., 38.
- Sowler *vs.* Day, 58 Iowa, 252.
- Kennedy *vs.* Green, 3 Mylne and Keene, 10 Eng. Ch. Cases, 699.
- Russell *vs.* Ranson, 76 Ill., 167.
- Stockton *vs.* Watson, 101 Fed., 490.
- Jensen *vs.* Lewis Inv. Co., 39 Neb., 373.
- Ins. Co. *vs.* Jones, 16 Colo., 515.
- Roland *vs.* Hart, L. R., 6 Ch. App., 678.
- Matteson *vs.* Blackmer, 46 Mich., 395.
- 1 Jones on Mortgages, sec. 560, p. 541.

In *Swift vs. Smith*, 102 U. S., 442, 26 L. Ed., 193, it is held:

“Where a trust deed is executed to secure a note, the trustee can not fraudulently-release the deed of trust, without payment of the note, to one who has actual or constructive notice that the note was not paid.”

It has not yet been necessary for the courts of this jurisdiction, or the Supreme Court of the United States, to decide the broad question whether or not the fraudulent release of a mortgage or deed of trust will be set aside even as against subsequent purchasers or mortgagees without notice, as has been decided by the New Jersey equity court.

The Supreme Court of the United States, in the Eldredge case, expressly declined to pass upon this question, saying at page 547:

"To prevent misapprehension, it is proper to state that we do not wish to intimate any opinion upon the general question whether a purchaser of property may not rely upon the release of a previous mortgage or trust deed found upon the official records of the District where the property is situated, without further inquiry, where he has no knowledge of the nonpayment of the indebtedness secured."

It is not believed that it will be necessary in the case at bar for this court to decide that broad question, for the reason that the appellant must prevail on the other grounds relied upon.

But it is submitted that the doctrine laid down in the New Jersey cases must be invoked in this case if necessary.

In conclusion it is submitted upon the facts and authorities cited that the lien of the appellee Poole on the proceeds of the sale of tract No. 2 is inferior to that of the plaintiff for three reasons, either of which will be sufficient; first, Richard Poole's constructive knowledge on account of the public record and the circumstances surrounding the notes and deeds of trust in question; second, his knowledge implied from the actual knowledge of his agents, Martin Brothers; third, because the appellant's deed of trust having been fraudulently released,

and this fact established beyond question, the lien must be reinstated even as against an innocent purchaser or mortgagee.

It is respectfully submitted that the case should be reversed and remanded with instructions to the court below to enter a decree reinstating the trust of the appellant as a lien upon the proceeds of the sale of tract No. 2 superior, so far as the proceeds of tract No. 2 are concerned, to the lien of the appellee.

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